

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No.	:	
61 and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification	:	File Nos.
of Various Authorizations in	:	0004030479,
the Wireless Radio Services	:	0004193028,
	:	0004193328,
Applicant with ENCANA OIL	:	0004354053,
AND GAS (USA), INC.; DUQUESNE	:	0004309872,
LIGHT COMPANY, DCP MIDSTREAM,	:	0004310060,
LP; JACKSON COUNTY RURAL	:	0004314903,
MEMBERSHIP ELECTRIC	:	0004315013,
COOPERATIVE; PUGET SOUND	:	0004430505,
ENERGY, INC.; ENBRIDGE ENERGY	:	0004417199,
COMPANY, INC.; INTERSTATE	:	0004419431,
POWER AND LIGHT COMPANY;	:	0004422320,
WISCONSIN POWER AND LIGHT	:	0004422329,
COMPANY; DIXIE ELECTRIC	:	0004507921,
MEMBERSHIP CORPORATION, INC.;	:	0004526264,
and ATLAS PIPELINE-MID	:	and
CONTINENT, LLC;	:	0004604962
	:	
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Service	:	
	:	

Wednesday,
December 10, 2014

VOLUME 12

Courtroom TWA-363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

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ALSO PRESENT:

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Opening Statements

None

Closing Statement

None

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None

Hearing Began: 10:05 a.m. Hearing Ended: 4:28 p.m.

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P R O C E E D I N G S

(10:05 a.m.)

JUDGE SIPPEL: I want you to know that we've contacted the reporter to let the reporter know that any request for purchasing a transcript at this time should not be, where's Mr. Havens?

MR. STENGER: Your Honor, Mr. Havens is running late. He apologizes, but don't --

JUDGE SIPPEL: Does he feel okay?

MR. STENGER: Don't hold up the hearing. Yes, he's tied up on another matter. I apologize.

JUDGE SIPPEL: No, that's okay. No, I just want to know his whereabouts. He's here in town, though?

MR. STENGER: Yes. Yes, Your Honor, he's still here.

JUDGE SIPPEL: All right. What I'm concerned about is obviously there's probably some protected matter that has worked its way into the transcript. Am I correct on that, Mr. Kirk? You seem to know most on the reporter.

MR. KIRK: I believe some confidential information has been discussed, yes.

JUDGE SIPPEL: Yes. In any event, counsel has to have an opportunity to review the transcripts and agree to where that should be redacted so that there'll be a non-public version and a public version. That's up to you; my approach would be to wait until the hearing is completed to undertake that task. It's up to

1 you. The transcripts normally don't take about 10 days anyway for
2 a transcript unless you want to overnight it.

3 MR. KING: I would say, Your Honor, I don't know any
4 other way to do it anyway because we'd have to review the
5 transcript.

6 JUDGE SIPPEL: I know, yes. That's it.

7 MR. KING: But that's a workable method.

8 JUDGE SIPPEL: Yes, yes. I remember when we had the
9 Comcast case they, they had so many attorneys on the case that they
10 could take one branch of the, what they had lined up down there.
11 Their younger attorneys would be pouring through this stuff the
12 same, almost the same night. And they had same day delivery, or
13 close to the same day delivery, but I'm not expecting that here.
14 I hope we're not getting that here. Anyway, that's neither here
15 nor there. But the important thing that I have this morning is,
16 and I'm kind of sorry that Mr. Havens is not here. I've been
17 giving this a lot of thought. I mean, Mr. Reardon, you're in the
18 courtroom.

19 MR. REARDON: Yes, sir.

20 JUDGE SIPPEL: Why don't you come up and take the stand?

21 MR. REARDON: Thank you, Your Honor.

22 JUDGE SIPPEL: Please, you understand you're still under
23 oath?

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: So I'm not going to administer another

1 oath.

2 THE WITNESS: Yes. Yes, Your Honor.

3 JUDGE SIPPEL: Please be seated.

4 MR. KIRK: Before we proceed, Your Honor, we can just
5 excuse all the other witnesses by way of moving forward.

6 JUDGE SIPPEL: We have to yet, I don't think we have to
7 yet --

8 MR. KIRK: Okay.

9 JUDGE SIPPEL: I don't think we have, yes, but we might
10 reach a point if we have to.

11 THE WITNESS: Good morning, Your Honor.

12 JUDGE SIPPEL: Good morning. Yes, the oath doesn't go
13 stale overnight. You don't have to put it in the refrigerator.
14 You're good. You're good. I've been giving this a lot of thought.
15 Basically, we terminated the hearing yesterday at a point where I
16 believe I was asking the question about plans that Maritime, or
17 Maritime successor would have with respect to those 16 licenses, if
18 you will, and Mr. Kirk, you objected for very good reasons, that
19 that was leading into protected territory. And so I'm addressing,
20 it's been sustained, primarily. I wish that Mr. Havens were in the
21 courtroom now, but I am going to have to, I have no choice. The
22 commission's policy is that these cases are going to get tried
23 where protected, where confidential business material -- documents
24 are concern, going to be tried in such a way that they can form
25 with the protective order policy of the commission, and that's as

1 the night follows the day, that's the way it's done. So I'm going
 2 to quadrant you now. This case, in effect, has been derailed, and
 3 we're fully staffed having you and Mr. Havens in the courtroom, and
 4 not being able to get access to this, to the witness to give the
 5 testimony, and I can't get it. And if I can't get it, nothing gets
 6 done. And also of course the court reporter, most important. But,
 7 the fact remains that I have no alternative but to require you to
 8 sign a protective order. And, unfortunately, your client isn't
 9 here.

10 MR. STENGER: Well, Your Honor, first of all, let me
 11 address the documents that we discussed yesterday.

12 JUDGE SIPPEL: Wait a minute. Why do you need to discuss
 13 about documents?

14 MR. STENGER: Well, Your Honor, I want to make sure my
 15 objection is clear on the record.

16 JUDGE SIPPEL: All right. Well, before you do that, let
 17 me just point this out, and this is an observation. You and Mr.
 18 Havens have suggested to me, told here that you were able to get
 19 one or two of these documents anyway through some other collection
 20 source, pacer or something like that?

21 MR. STENGER: Your Honor, that's not the basis of my
 22 objection.

23 JUDGE SIPPEL: No, I'm not asking you. I'm trying to
 24 talk, I'm not asking you to testify your --

25 MR. STENGER: Your Honor --

1 JUDGE SIPPEL: Let me just tell this to you. It seems to
2 me under those circumstances that you're not losing much by signing
3 the order anyway because Mr. Havens is out of the courtroom. He's
4 obviously seen these documents that have been obtained through some
5 other source. I'm not going to say surreptitiously, but some would
6 think that. And so where is the harm being done here?

7 MR. STENGER: Your Honor, may I state my objection?

8 JUDGE SIPPEL: Yes, I mean harm, in the sense to you, how
9 do you and Mr. Havens feel harmed by your signing of the protective
10 order?

11 MR. STENGER: Your Honor, may I state my objection on the
12 record?

13 JUDGE SIPPEL: Go right ahead.

14 MR. STENGER: And how we're being harmed?

15 JUDGE SIPPEL: You can, you may.

16 MR. STENGER: Section 310 of the Communications Act says
17 that sales and leases of spectrum have to be approved by the
18 commission, and in order for them to be approved by the commission
19 you have to file applications, and you all ask to disclose the
20 parties, the spectrum, and the location. Much of the other
21 information that is in FCC-related transactional documents is
22 prescribed by the act, and it has to be included in those
23 contracts. None of that contractual information can be deemed to
24 be confidential.

25 I've been doing this for 37 years; I've never had a

1 lawyer tell me that he can't give me a redacted copy of the
 2 contract. Normally, the only thing that's redacted is the purchase
 3 price. This is the only case that I've ever been in when the
 4 other, where the other attorneys have refused to give me redacted
 5 copies of purchase agreements and leases that have to be approved
 6 by the commission pursuant to Section 310, and it's an abuse of the
 7 process and the rules to refuse to give me redacted copies of the
 8 contracts.

9 As far as Pinnacle's answers to interrogatories are
 10 concerned. There were two sets of answers to interrogatories that
 11 Pinnacle gave in response to questions from the Bureau, and
 12 yesterday in the heat of the moment I misunderstood Pinnacle's
 13 counsel. He said that he gave me, by a mistake, a copy of his
 14 answers to interrogatories. I thought what he was telling me was
 15 that he gave me an un-redacted copy and he wanted me to give that
 16 back so he could give me a redacted copy. In fact, he's not giving
 17 me any copy of his answers to interrogatories at all.

18 Now, it's completely beyond the pale for him to assert
 19 that every single word that he wrote in response to this bureau's
 20 interrogatory is confidential and proprietary information under
 21 section 0.495(b) of the commission's rules. And it's a violation
 22 of the commission's rules on confidentiality for him to withhold in
 23 their entirety his answers to interrogatories.

24 Those are the two categories of documents that I believe
 25 that I'm entitled to have redacted copies of, and I believe that

1 it's inappropriate and wrong for the parties to withhold those
2 documents from me in their entirety. And if I sign the protective
3 order, I am, in effect, conceding that that's okay, and not only
4 that, the protective order does not allow Mr. Havens to see those
5 documents. At a minim he's entitled to see redacted copies of the
6 documents under section 310 and under rule section 459.

7 JUDGE SIPPEL: You know, the problem with this is, and
8 that was a very nice speech you gave, the problem is that this
9 should have been raised both, see, this is the trouble with going
10 through multiple attorneys. You, you came into the case about
11 chapter 10. Back in chapter two, when a lot of these decisions
12 were being made, we were discussing when my attorney advisor and I
13 were discussing, you know, what's coming along in the case, we kept
14 asking one another has anybody seen a motion to get relief under
15 the protective order because there is a provision where you can get
16 relief under the protective order, but some document has been
17 inadvertently determined to be confidential. That's commonplace.
18 We'll be seen to wrap, slap it together so fast that there's an
19 oversight, and some documents that are, should be available are
20 made unavailable. But that, we never got the motion.

21 MR. STENGER: Your Honor, I --

22 JUDGE SIPPEL: We've never had an attorney that it takes
23 long enough to presume about it.

24 MR. STENGER: I filed a motion about the abuse of the
25 protective order.

1 JUDGE SIPPEL: But you pulled, you pulled --

2 MR. STENGER: It was the bureau moved to strike it saying
3 it was disrupting the proceedings.

4 MS. KANE: Your Honor, we didn't move to strike it. We
5 properly opposed it, and frankly, here we are again, he's not
6 answered your actual question, which was how was it supposed to
7 harm him or his client in signing the protective order? If he had
8 signed the protective order, he would have gotten the confidential
9 documents, and would have been under a position to be able to say
10 these shouldn't have been designated confidential, and pursuant to
11 the terms of the protective order, which, with all due respected,
12 superseded this case, any other confidentiality provisions that the
13 commission may allow. This is the protective order and the
14 confidentiality provisions that Your Honor set for the purposes of
15 this hearing, and this is the protective order that needs to, to
16 govern, and those are the rules that need to govern. He's choosing
17 not to play by those rules, and instead, to try to go outside those
18 rules because he doesn't want to sign on to this protective order.
19 He still has not answered you why it is that he doesn't want to do
20 that, and in doing so, we are continuously delaying this hearing
21 and depriving the public record, I mean, Your Honor's record of
22 information that is valuable to deciding the issues before you.

23 JUDGE SIPPEL: This is what I characterize as a
24 disruption, and you're responsible for it Mr. Stenger, and your
25 client, but he's not here to be responsible. I'm telling you right

1 now you're responsible for this disruption. And let me tell you
 2 this, too. I mean, there's no way that you can possibly have
 3 grappled with all these sickness conditions because you weren't
 4 around in the case. You just came Johnny-come-lately, and I'm glad
 5 to have you in the case Johnny-come-lately, but you've got to
 6 litigate what's here. You're not here to recreate what was done
 7 months ago. And so you're stuck with what you've got and I'd say
 8 you're a day late and a dollar short of all of this. There was no
 9 preliminary, no pre-hearing motions made that should have been made
 10 six months ago, at a minimum. Probably nine months ago or, or two
 11 years ago to get this straightened out on the, have these documents
 12 examined by myself that you're contending should be made public and
 13 we could have had a ruling on it, and maybe you would have won some
 14 of them, but you weren't here to do it.

15 MR. STENGER: Well, Your Honor --

16 JUDGE SIPPEL: Nobody did it.

17 MR. STENGER: I made a motion yesterday.

18 JUDGE SIPPEL: Yesterday is too late. I told you; you're
 19 a day late and a dollar short. I can't make a plan on that.

20 MR. STENGER: Except it's obvious from looking at these
 21 contracts, Your Honor, that there's nothing confidential in them
 22 other than arguing.

23 JUDGE SIPPEL: I said that time to make it was six months
 24 ago, not now. Do you understand me? So sign the order, please, or
 25 we have to make other arrangements, and it's not going to be

1 helpful.

2 MR. STENGER: Well, Your Honor, I'll have to call my
3 client.

4 JUDGE SIPPEL: Who's conveniently not here. I'm sorry,
5 I hope nothing's wrong with Mr. Havens. I didn't mean it to imply
6 bad --

7 MR. STENGER: The reason why that order doesn't work for
8 us is that it's a small company, he's the president of these
9 companies, and he's also pro se person; for me not to be able to
10 discuss information with him and be writing secret briefs that he
11 can't read doesn't make any sense. I can't --

12 JUDGE SIPPEL: Doesn't make any sense? It doesn't make
13 any sense? What do you mean it doesn't make any sense? What's the
14 point of having a protective order, then? What's the point of
15 having a protective order policy if it doesn't make any sense to
16 you? You know, I don't know how the Czarist Russia worked, but I
17 mean it's not the way it goes here. There's a policy on
18 protecting documents. The only argument you have is that some of
19 these documents were wrongly designated as confidential.

20 MR. STENGER: In their entirety.

21 JUDGE SIPPEL: And that's six months ago, ten months ago,
22 not today. Today is a different day. Today is in the --

23 MR. STENGER: They were so designated when they were
24 filed in this court.

25 JUDGE SIPPEL: Nobody questioned it. Do you understand

1 me? What is it that I can't get across to you?

2 MR. STENGER: What about --

3 JUDGE SIPPEL: Nobody questioned it.

4 MR. STENGER: I'd like to --

5 JUDGE SIPPEL: Nobody picked up one document and said to
6 me, Your Honor, we want, we want motion to compel that this thing
7 be pulled out of the, out of this file because it clearly is not a
8 document that requires protection.

9 MR. STENGER: Your Honor.

10 JUDGE SIPPEL: Or that's allowed to be protected. Nobody
11 did that. Not one person. Do you know how many attorneys were
12 here before you? I can count three anyway.

13 MR. STENGER: While you're making this decision, I'd like
14 to know if the engineering report is going to be designated as
15 confidential or not.

16 JUDGE SIPPEL: Whose engineering report?

17 MR. STENGER: Mr. Reardon's engineering report.

18 JUDGE SIPPEL: It is confidential now?

19 MR. STENGER: I don't know if it's going to be
20 designated.

21 MS. KANE: I don't know what engineering report we're
22 referring to, Your Honor. I don't know --

23 JUDGE SIPPEL: What are we talking about?

24 MR. STENGER: Because Mr. Reardon testified yesterday
25 that he had no personal knowledge as to what the operational status

1 of any of these stations was.

2 JUDGE SIPPEL: I don't think that was his testimony.

3 MS. KANE: Objection. That's a mischaracterization.

4 JUDGE SIPPEL: I don't think that was his testimony.

5 MR. STENGER: And he was relying upon an engineering
6 report.

7 JUDGE SIPPEL: And you keep going with your, do you
8 understand, you're not telling me the truth. He didn't testify
9 that way and you know it.

10 MR. STENGER: He said, he said that he was relying on an
11 engineering report from two engineers, Your Honor. That'll be in
12 the transcript. He got an --

13 JUDGE SIPPEL: What's that got to do with you signing
14 this order?

15 MR. STENGER: Because I'd like to know if that
16 engineering report --

17 JUDGE SIPPEL: You're not going to ask that question.
18 You're not going to ask anymore questions until you sign that
19 order, the protective order. You pushed this thing to the point
20 where you've derailed the whole hearing.

21 MR. STENGER: Well, if you're ordering me to sign the
22 protective order, I'll sign it, if that's your order.

23 JUDGE SIPPEL: I'm telling you. I'm telling you that you
24 have to sign the order. I'm not ordering you to sign any order.
25 I'm not the czar. But I'm telling you, well, that's what I'm

1 telling you. For further participation in this case, you must sign
2 the order.

3 MR. STENGER: Well, where is it? I'll sign it.

4 JUDGE SIPPEL: Mary, where is the order?

5 MR. STENGER: But I would still like to know whether Mr.
6 Reardon is going to produce the engineering report that he --

7 JUDGE SIPPEL: Well, wait a minute. Let's get the order
8 signed and then we'll do that. We'll take a five minute recess.
9 Maybe five minutes so that we can go find the order. We had it
10 yesterday, but it's not here today. That's all right, just take
11 five minutes.

12 (Whereupon, the above-entitled matter went off the record
13 at 10:23 a.m. and resumed at 10:26 a.m.)

14 JUDGE SIPPEL: All parties that were here before we
15 recessed are again present.

16 Mr. Stenger, when you're finished there you can hand that
17 up. Thank you. Thank you very much, Mr. Stenger.

18 MR. ENGEL: So may we, may we see the copy, Your Honor?

19 JUDGE SIPPEL: Yes, certainly. You can see the one that
20 he signed. You can see it. That's fine.

21 MS. KANE: Your Honor, this is regarding the order.

22 JUDGE SIPPEL: Here's a copy. Here's an extra copy.

23 MS. KANE: No, we have a copy of the protective order,
24 Your Honor. We just wanted to ensure that there weren't any
25 additions or changes being made to the protective order.

1 JUDGE SIPPEL: Okay. Well, I think that's being overly
2 concerned. You'd have a chance to do that at the break. You don't
3 have to do that now on my time.

4 MR. ENGEL: Thank you.

5 MS. KANE: Thank you.

6 JUDGE SIPPEL: Yes.

7 MR. KELLER: Are we on the record?

8 JUDGE SIPPEL: We should be on the record.

9 MR. KELLER: Okay. I just wanted to say one quick thing
10 to impose on your time for a moment. I just want to state for the
11 record my understanding that the protective order, which has a
12 distinction between highly confidential and confidential documents,
13 there's a certain category from the confidential only documents
14 that notwithstanding his pro se status and notwithstanding it being
15 small, closely held companies, that Mr. Havens does not fit the
16 category of those exceptions for the confidential documents in
17 there.

18 JUDGE SIPPEL: Thank you. Thank you, that's an
19 observation; it's not a determination, but we'll take it. Mr.
20 Stenger, I appreciate your cooperation. I want to let you know
21 personally from where I am sitting that you're a very, very
22 important part of this case and you do know how to conduct yourself
23 properly, and I hope that you continue to do so. I don't want to
24 lose you, so I just wanted to let you, not that I'm threatening
25 that you would, I'm just simply trying to state how I feel about

1 your participation in the case.

2 MR. STENGER: Thank you, Your Honor. I appreciate that
3 and so does my law firm.

4 JUDGE SIPPEL: You're very welcome, sir. Now, let's move
5 on.

6 MR. STENGER: I would like to raise again the point that
7 I raise earlier this morning, which is I would like to know if Mr.
8 Reardon is going to be required to produce a copy of the
9 engineering report that he was testifying about yesterday.

10 JUDGE SIPPEL: Well, let's --

11 MR. STENGER: I want to find out.

12 JUDGE SIPPEL: Let's explore that with the witness. Who
13 was doing the cross-examination yesterday?

14 MR. KELLER: You were.

15 JUDGE SIPPEL: I mean, aside from me.

16 MR. STENGER: I was, Your Honor.

17 JUDGE SIPPEL: All right, well, why don't you ask Mr.
18 Reardon. You yourself, you can ask Mr. Reardon.

19 MR. STENGER: Mr. Reardon --

20 MS. KANE: Your Honor, should we clear the courtroom of
21 the other witnesses at this point?

22 JUDGE SIPPEL: Yes, do we have to?

23 MR. STENGER: Yes, Your Honor, I would prefer that all
24 the other witnesses clear the courtroom when a witness is
25 testifying.

1 JUDGE SIPPEL: Okay. Well, they don't have to identify
2 themselves. Public hearing and public observance. Okay, let's,
3 but you can ask those questions. Go ahead.

4 MS. KANE: Your Honor, if I may, there was a question
5 pending before Mr. Reardon that was pending before we closed the,
6 terminated the hearing at the end of the day yesterday, so that
7 question is still pending in the record and, sir, before Mr.
8 Stenger continues there is that question pending.

9 MR. STENGER: Well, actually, my objection is pending
10 from the prior question. If you'll recall what happened, Your
11 Honor --

12 JUDGE SIPPEL: I'm sorry, I'm directing traffic here. I
13 want to hear this exchange first, before we get to the point of the
14 question yesterday. I'm very patient. People don't have to answer
15 my questions right away. Mr. Reardon, do you understand what he's
16 asking?

17 MR. STENGER: Mr. Reardon --

18 JUDGE SIPPEL: Well, let me ask you this way, Mr.
19 Reardon, are you going to be consulting this engineering report
20 that you referred to yesterday?

21 THE WITNESS: Well, Your Honor, I don't recall referring
22 to the specific engineering report.

23 JUDGE SIPPEL: Thank you. All right, stop right there.
24 So where are we, Mr. Stenger. Do you want to ask --

25 BY MR. STENGER:

1 Q You testified that you were relying on information
2 from two engineers in a engineering report. Yes or no?

3 MS. KANE: Objection. Mischaracterizes.

4 JUDGE SIPPEL: Sustained.

5 BY MR. STENGER:

6 Q In your testimony about the operational status of
7 the stations you were relying on a written report or reports from
8 engineers, yes or no?

9 MS. KANE: Objection, mischaracterizes the previous
10 testimony. Asked and answered.

11 MR. STENGER: I'm not mischaracterizing it, I'm asking him
12 in our testimony --

13 JUDGE SIPPEL: Wait a minute. Wait just a second.

14 MR. STENGER: Were you relying on written reports from
15 engineers?

16 JUDGE SIPPEL: I'm going to sustain the objection. I
17 want to approach it a little bit differently. Ask him the question
18 as to whether or not there are any outstanding engineering reports
19 with respect to these assets and where they are.

20 MR. STENGER: I'm happy to have him answer that question.

21 THE WITNESS: Yes, I testified yesterday, Your Honor, I
22 believe, with a Hamden, Connecticut site and a Rehoboth site.
23 There were individuals who went to both of those sites who reported
24 back that they had checked out those sites, that those things were
25 operational, and that information, I believe, has been produced in

1 this proceeding. If it has not, certainly, with the advice of
 2 counsel, we can produce it. Mr. Meister was the individual for
 3 Hamden, Connecticut, Bob Meister, and Bob Salvatore with Cyber Com
 4 in Warwick, Rhode Island, who is the president of that company sent
 5 out one of his engineers. The name escapes me of that person, but
 6 nonetheless, those are the two, perhaps, the two people that Mr.
 7 Stinger is referring to.

8 JUDGE SIPPEL: And these are not, so these are not
 9 necessarily, or are they? Would you characterize these as
 10 "engineering reports," or just reports that happened to be done by
 11 one of the one of them who is an engineer. These are basically
 12 observations that are being recorded upon the observations of many.
 13 Am I right on the latter?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE SIPPEL: That's a double question.

16 THE WITNESS: No, that's correct. These are more
 17 observations that were made by engineers who went out and visited
 18 the site, made sure that the transmitter was operating properly,
 19 the utilities were connected, had scanners, and --

20 MR. STENGER: Excuse me, Mr. Reardon, we have a limited
 21 amount of time for the hearing.

22 JUDGE SIPPEL: Whoa, whoa, whoa, whoa.

23 MR. STENGER: I would appreciate it if you would please
 24 stop making speeches. I just asked you if --

25 JUDGE SIPPEL: Now, he's answered my question. This is

1 not a speech. He's answered my question. He's not making a
2 speech. I'm sorry, but we're back to square one. So, go ahead,
3 continue your answer.

4 THE WITNESS: I think I was pretty much done.

5 JUDGE SIPPEL: All right. We know what you're saying.
6 We know what you're saying. Now, go ahead.

7 MR. STENGER: Are the two reports that you're referring
8 to, are the two reports that you're referring to the reports that
9 have been put into the record by the Bureau as Bureau Exhibits 49
10 and 50? Are those the two reports you're referring to?

11 MS. KANE: Objection, lack of foundation. He hasn't
12 established that there are two reports.

13 JUDGE SIPPEL: Well, wait a minute. He can, this is
14 cross-examination. I want to give a little leeway on that. Yes,
15 what is it you need? Yes. You know it better than I do. Yes,
16 these are the easy to reach. Thank you.

17 MR. STENGER: Your Honor, I was referring to --

18 THE WITNESS: Which exhibits are we talking about?

19 MR. STENGER: I was referring to Bureau Exhibits 49 and
20 50 in the first bureau binder.

21 JUDGE SIPPEL: Cyber Com, is that 49?

22 MR. STENGER: Yes, Your Honor, and 50 is the declaration
23 from Mr. Meister.

24 JUDGE SIPPEL: That's another big German word; that means
25 "master".

1 THE WITNESS: Was the question --

2 JUDGE SIPPEL: There's no question.

3 MR. STENGER: Yes, the question was are these two
4 exhibits the reports that he is referring to.

5 JUDGE SIPPEL: Thank you. I'm sorry. My bad.

6 THE WITNESS: Yes, sir. These include the information.
7 These are the two individuals that I was referring to, and I
8 believe I also testified yesterday that in addition to these two,
9 from time to time I will either get an email or communication from
10 Mr. Meister, in particular, who will routinely check in with me
11 every month and say it's still working, still on the air, that sort
12 of thing.

13 MR. STENGER: Well, Your Honor, based on the testimony
14 that he just gave, I would like to move to strike all of the
15 testimony that he gave about the other sites besides these two
16 sites, as being based on hearsay, because these are the only two
17 written reports that he testified about. His testimony about all
18 of the other sites was apparently based on hearsay of engineers
19 telling him things that are not included in either of these
20 reports.

21 JUDGE SIPPEL: Well, if that's the case you can, you can
22 argue about the rate, but, again, it's too late to go back, the
23 bell has been rung. We've moved on, we're not going to go back and
24 reexamine what's hearsay and what's not hearsay in previous
25 testimony.

1 MR. STENGER: Well, I'd also like to make a separate
2 motion to strike his testimony about these two sites because the
3 reports that he's relying on here one, the first one, Exhibit 49 is
4 a report that he received on August 23, 2013, which is a year and
5 a half ago, and the other report is a report that he received on
6 10th of September 2013, which is also over a year ago. Neither one
7 of these reports is anything remotely like current, and there's no
8 basis for him to be testifying about the operational status of
9 these stations based on reports that are a year, over a year old.

10 JUDGE SIPPEL: Goes to the weight. You're overruled.
11 Well, you can't, your objection is overruled. Your motion to
12 strike --

13 MS. KANE: Your Honor, we also would like to note for the
14 record that he continues to mischaracterize these two exhibits.
15 Mr. Reardon has not testified that they are reports. They are --

16 JUDGE SIPPEL: He did answer that. He did.

17 MS. KANE: They're merely decorations.

18 JUDGE SIPPEL: That's right. We're past that. We're
19 past that, Ms. Kane, but you're right. I mean, you're right, we're
20 past that. Okay, next question. Next question?

21 MR. STENGER: Are you waiting for me? I believe that you
22 had the independent question, but we, I think we've finished with
23 my question and I think you had a pending question.

24 JUDGE SIPPEL: Okay. Thank you, okay. We don't have the
25 same thing from yesterday's testimony, right? I can paraphrase it,

1 I think.

2 THE WITNESS: I don't know if you were right up on the
3 constraints.

4 JUDGE SIPPEL: No, no. Okay, is there any kind of an
5 overall plan that is in existence with respect to keeping these 16
6 sites in operation?

7 THE WITNESS: Yes, Your Honor.

8 JUDGE SIPPEL: What is it?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: Well, describe it first, and then --

11 MR. KIRK: Your Honor?

12 JUDGE SIPPEL: Yes.

13 MR. KIRK: If I may, I just want to make sure that
14 everyone in the room has signed the protective order.

15 JUDGE SIPPEL: Except the judge. I can go. That's okay.
16 You're FCC?

17 THE CLERK: No.

18 MR. KIRK: Sorry, Your Honor.

19 JUDGE SIPPEL: Just relax. Thank you very much for doing
20 that, Mr. Kirk, I'm stifling in here.

21 MR. ENGEL: Can we keep the door closed, actually,
22 because Mr. Havens won't be allowed to join us.

23 JUDGE SIPPEL: No.

24 MS. KANE: We do need to designate it as confidential
25 testimony.

1 JUDGE SIPPEL: Hold on just a second. Just a second.

2 Hold on just a second.

3 MR. ENGEL: Your Honor, for clarification, I asked Sam
4 here whether we need to just clearly designate that we're entering
5 a confidential phase, so if you have to create two transcripts
6 they'll be, it'll be easily done. What would you prefer us to say
7 going in and out of these confidential sessions?

8 JUDGE SIPPEL: That's a very good suggestion, but I'm the
9 one that has to do that.

10 MR. ENGEL: Thank you, Your Honor.

11 JUDGE SIPPEL: You're now in a confidential session, and
12 everybody who is not on the protective order or otherwise is, has
13 no business here is, has left the courtroom and so we're secure.
14 We're secure. Now, did I ask you a question?

15 (Whereupon, the above-entitled matter went off the record
16 at 10:40 a.m. and resumed at 10:41 a.m.)

17 JUDGE SIPPEL: It's, what is it, is that 11?

18 MS. KANE: It's 10:40.

19 JUDGE SIPPEL: Okay, let's go back on the record. So the
20 reporter has referenced that the time is 10:40 and the date is 10
21 November. And we're in a confidential session. Now, you are, do
22 I have a question pending, or do I have to ask you one?

23 THE WITNESS: Yes, Your Honor, I believe you asked me
24 what is the plan going forward?

25 JUDGE SIPPEL: Yes, sir.

1 THE WITNESS: Yes, so the plan going forward for Choctaw
2 is slightly different than the plan going forward from Maritime, so
3 if I could address, perhaps, Choctaw first, which would be at the
4 Choctaw acquires the licenses.

5 JUDGE SIPPEL: Yes, and you're speaking as an employee of
6 Choctaw?

7 THE WITNESS: Correct. Correct. And then I can also
8 address what happens at Choctaw is not successful when Maritime
9 retains the license at this point.

10 JUDGE SIPPEL: Thank you.

11 THE WITNESS: Would that be okay?

12 JUDGE SIPPEL: That would be perfect.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 JUDGE SIPPEL: Wait a minute. Hold up just a second now.

22 THE WITNESS: I'm sorry.

23 JUDGE SIPPEL: You've got to slow down there.

24 THE WITNESS: Okay.

25 JUDGE SIPPEL: So how is it, what is the first spectrum

1 you mentioned?

2 THE WITNESS: [REDACTED]

3 JUDGE SIPPEL: [REDACTED]

4 THE WITNESS: [REDACTED]

5 JUDGE SIPPEL: [REDACTED]

6 THE WITNESS: [REDACTED]

7 JUDGE SIPPEL: [REDACTED]

8 THE WITNESS: [REDACTED]

9 JUDGE SIPPEL: [REDACTED]

10 THE WITNESS: [REDACTED]

11 [REDACTED] [REDACTED]

12 JUDGE SIPPEL: [REDACTED]

13 THE WITNESS: [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED]

19 JUDGE SIPPEL: [REDACTED]

20 THE WITNESS: [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

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22 [REDACTED]

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24 [REDACTED]

25 [REDACTED]

1 MR. STENGER: Your Honor?

2 THE WITNESS: Or, or pay the penny for that.

3 MR. STENGER: Your Honor?

4 JUDGE SIPPEL: Yes.

5 MR. STENGER: I object to having this witness drone on
6 and on and, and do a download to me under the terms of a protective
7 order of all kinds of information that he claims is confidential
8 and that may be so. I don't care whether it's confidential or not.
9 It has nothing to do with this hearing. He hasn't said anything
10 about the plans of Choctaw to put the 16 stations on the air. The
11 hearing designation order has absolutely nothing to do with
12 Spectrum and efforts to sale Spectrum. In fact, the commission has
13 said that that is Spectrum warehousing, which is unlawful under the
14 commission's rules and policies. The only issue is what they are
15 going to do with the 16 stations, and he hasn't --

16 MS. KANE: Your Honor, this is getting ridiculous. He's
17 not interrupted the witness --

18 MR. STENGER: -- said one, excuse me, can I just finish
19 my objection. He hasn't said one word.

20 JUDGE SIPPEL: I understand what it is. I understand
21 your objection. You must think that I'm awfully slow. I really do
22 understand your objection. Okay. If you objected five minutes
23 ago, I probably would have stopped him, but it's very interesting,
24 I'm very interested in it. But you're right. You're right. It's
25 what, it's speculative, it's all kinds of things. But, I have one,

1 I take that back, it might not be speculative. So, it --

2 MS. KANE: He hasn't come out to complete his answer, so,
3 I mean, you asked him a question; there was no objection to the
4 question as being irrelevant. In fact, it's highly relevant in
5 regards to what you specifically ask for this hearing to be about,
6 and which is the future plans for this, for this Spectrum.

7 MR. STENGER: That wasn't the question, ma'am.

8 MS. KANE: He's in, he is in, he is --

9 MR. STENGER: If he asked what his plans were for the 16
10 stations.

11 MS. KANE: And he is answering the question. I'm sorry
12 that you don't appreciate the answer.

13 MR. STENGER: He hasn't said a word about the stations.

14 MS. KANE: But he hasn't been allowed to complete his
15 answer and you continuously try to interrupt these witnesses who
16 you called for cross-examination. They should be entitled to
17 respond to their answers.

18 MR. STENGER: Your Honor, if I may, I attempted to
19 interrupt Mr. Reardon yesterday when he was giving a long hearsay
20 speech that was based on, apparently nothing --

21 JUDGE SIPPEL: That was yesterday.

22 MR. STENGER: No written reports and Mr. Engel
23 interrupted me --

24 JUDGE SIPPEL: That was yesterday. That was before you
25 signed the protective order.

1 MR. STENGER: And keep in mind that they, I have one
2 witness in this proceeding and they struck my witness's testimony
3 on the grounds that it was hearsay, and I tried to stop, when I
4 tried to stop Mr. Reardon from droning on about hearsay Mr. Engel
5 provided --

6 MS. KANE: That is an inaccurate representation of the
7 evidence.

8 JUDGE SIPPEL: There are two types of testimony; direct
9 testimony and cross-examine testimony. And you'll see it's a
10 little bit looser for cross-examination testimony. And once, once,
11 maybe it's my fault. Maybe I'm not asking point questions, but the
12 witness is entitled to answer my questions. It's a rule of common,
13 common courtesy if nothing else. Yes, I will take them one at a
14 time.

15 MR. KELLER: I want to stick around; I just went straight
16 to the back to correct a statement. With the two witnesses he's
17 referring to were not struck on the grounds of hearsay, they were
18 struck on the grounds that in light of their testimony they both
19 stated they knew absolutely nothing about construction and
20 operations.

21 MR. STENGER: No, I'm talking about Steve Calabrese's
22 testimony. Portions of his testimony were struck by Mr. Engel.

23 JUDGE SIPPEL: That's his direct testimony. That's his
24 direct --

25 MR. ENGEL: I didn't strike anybody's testimony. I think

1 that's a mischaracterization. I don't strike testimony, Your
2 Honor, that's your job.

3 JUDGE SIPPEL: Thank you. Mr. Kirk?

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 JUDGE SIPPEL: Correct. So, whatever your objection to
12 is overruled. Whatever relief you're asking for is not going to be
13 granted, Mr. Stenger.

14 CROSS-EXAMINATION

15 BY MR. STEGNER

16 Q Now, let me ask you to break it down a little bit. All
17 right, you've given us a big overview, and could you tell me now,
18 or tell us how is this kind of a plan put together in court or
19 province.

20 A Yes.

21 Q You know, is there a written plan that's been circulated
22 to directors of the company and, you know, been a thick piece
23 passed around and this is what they're really thinking about? Is
24 that in existence?

25 A So the document that's been circulated to Pat Trammell

1 and the, I assume, captain, had sent it to the other members of the
2 Choctaw board.

3 Q And Pat Trammell is who?

4 A I'm sorry, Pat Trammel is the head of Choctaw, the
5 managing director of Choctaw Telecom.

6 Q Is she like the CEO?

7 A He'll be, he'll be testifying here, I believe later
8 today.

9 Q Because I didn't see his name. Yes.

10 A So I run the day to day but Pat is the, sort of --

11 Q He's the big thing.

12 A Yes, the chairman of the board, if you will, in a sense.

13 Q Okay. All right.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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Q [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

MS. KANE: Your Honor, Choctaw was not required to produce discovery in this case because its role in this case was limited by Your Honor to just the bankruptcy related proceedings.

JUDGE SIPPEL: Well, that's, again, that goes back to why, because I was told that they didn't want to participate. I mean, I don't know, I can't tell who's on first here. I, all right, whatever I did I did, whatever happened happened, but it seems to me that Choctaw is integral in terms of what the future plans are. Do you agree with that, Ms. Kane?

MS. KANE: We made that argument initially, Your Honor. If you recall, we served them with discovery; we were able to obtain some discovery from them at the very end of the case.

JUDGE SIPPEL: But they opposed it?

MS. KANE: No, they provided interrogatory responses, but if you recall, you granted us very limited discovery at the very end of, I believe it was July or August of this year after the summary decision motion had been filed, and we served interrogatories on them, but not document requests because they had taken such a limited role.

1 MR. STENGER: And based on that, Your Honor, we object to
2 them being allowed to testify at this 13th hour testimony. They,
3 they --

4 JUDGE SIPPEL: You cross-examined him; I'm asking the
5 questions.

6 MR. STENGER: No. Well, I'm asking on behalf of Choctaw.

7 JUDGE SIPPEL: I don't care. I'm asking the questions.
8 You don't have to ask these questions. You wouldn't be asking
9 these questions? I can't believe that.

10 MS. KANE: Your Honor, we also object, this is not 13th
11 hours.

12 JUDGE SIPPEL: This is exactly what you want to know.

13 MS. KANE: We've had Mr. Trammell on the Bureau's direct
14 case since September. They've been well aware that Choctaw and
15 Choctaw's intentions are going to be part of this case.

16 JUDGE SIPPEL: Well, that's, let me get --

17 MR. STENGER: What does that have to do with this? Mr.
18 Trammell is not on the stand. This is --

19 JUDGE SIPPEL: Wait a minute, wait. Wait just a minute.
20 This thing is getting way far afield.

21 MR. STENGER: And I would not be asking that question, I
22 would be asking what are you going to do to put the 16 stations
23 back into service, the 16 licensed stations. That's the only
24 question I would be asking.

25 JUDGE SIPPEL: All right.

1 MR. STENGER: I wouldn't be asking --

2 JUDGE SIPPEL: All right, let me ask that question. What
3 would you be doing about putting the 16 stations back on the air?

4 THE WITNESS: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 JUDGE SIPPEL: [REDACTED]

17 THE WITNESS: [REDACTED]

18 JUDGE SIPPEL: [REDACTED]

19 [REDACTED]

20 THE WITNESS: [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 JUDGE SIPPEL: [REDACTED] [REDACTED]

25 [REDACTED]

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[REDACTED]

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THE WITNESS:

[REDACTED]

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[REDACTED]

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JUDGE SIPPEL:

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THE WITNESS:

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[REDACTED]

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JUDGE SIPPEL:

[REDACTED]

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THE WITNESS:

[REDACTED]

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JUDGE SIPPEL:

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[REDACTED]

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MR. STENGER:

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[REDACTED]
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MS. KANE: Your Honor, please. This is just, he's just
testifying, he hasn't provided any basis for his objection.

JUDGE SIPPEL: That's right.

MR. STENGER: I'm trying to stop the witness, but --

JUDGE SIPPEL: You aren't stopping the witness.

MR. STENGER: You're wasting everyone's time.

MS. KANE: You're the one who's wasting everyone's time.

JUDGE SIPPEL: You're sucking up all the air is what
you're doing. What about the status of Pinnacle and these stations?

THE WITNESS: Yes, so --

JUDGE SIPPEL: Current status, I should say.

THE WITNESS: Sure, so the, the lease that was signed in
2008 combines the Meadowlands lease with the turnpike lease into
one master lease that shows all of the --

JUDGE SIPPEL: And Pinnacle is the, Pinnacle is the
lessee?

THE WITNESS: Yes, sir. And then Pinnacle's customers,
in turn, are the New Jersey Sports and Entertainment Authority and
the New Jersey Turnpike Authority or, which operates both the
Garden State Parkway and the turnpike.

JUDGE SIPPEL: Yes.

THE WITNESS: Okay, so to go forward with my response,

1 the plan would be that that will at least run until January 2016
 2 under the existing lease agreement. So, Choctaw in the bankruptcy
 3 plan of reorganization had agreed to assume that contract as part
 4 of the reorganization, so whether it's Choctaw or Maritime, the
 5 licensee of the spectrum is bound to at least January 2016 to
 6 continue to operate as the lessor of that spectrum for those call
 7 signs.

8 JUDGE SIPPEL: Okay. All right, stop there. Do you have
 9 anything that contradicts that?

10 MR. STENGER: Are you addressing me, Your Honor?

11 JUDGE SIPPEL: Yes, sir, I'm addressing you, Mr. Stenger.
 12 Do you have anything that contradicts what he just said?

13 MR. STENGER: Yes, Your Honor. I just said that the, the
 14 hearing is supposed to be about the 16 stations --

15 JUDGE SIPPEL: No, no, no, no, no. I don't want a
 16 speech. Do you have something specific?

17 MR. STENGER: Yes, the witness. The lease, the lease.
 18 The lease doesn't, the lease, the testimony of Pinnacle, that both
 19 contradicts what he said because the lease doesn't require Pinnacle
 20 to operate anything --

21 JUDGE SIPPEL: Then you get this, any evidence, if it's
 22 in evidence you can refer to it and find it, if you find it to be
 23 contradictory. It sounds to me like he was very clear of what he
 24 said was going to happen.

25 MR. STENGER: Why don't you ask him if Pinnacle was

1 operating --

2 JUDGE SIPPEL: In 2016.

3 MR. STENGER: Is Pinnacle operating any of the sites?

4 JUDGE SIPPEL: Well --

5 MS. KANE: Objection. Lack of foundation.

6 JUDGE SIPPEL: How is it lack of foundation?

7 MS. KANE: Your Honor, he's not, he, if he made, if he
8 knows the information personally I guess that's true, but he hasn't
9 even established that John would have information about what
10 Pinnacle is currently doing.

11 JUDGE SIPPEL: So let's ask that question. Do you have
12 knowledge of what Pinnacle is presently doing? Firsthand
13 knowledge.

14 THE WITNESS: Well, I would say, my understanding is that
15 from what --

16 JUDGE SIPPEL: From what, well what are some --

17 THE WITNESS: Well, from years of knowing the Pinnacle
18 management, from signing, entering into these agreements, from
19 knowing Motorola and the passport technology that's built out,
20 assisting with that in the terms of Maritime had other passport
21 channels built out around the systems, built out around the
22 country, so this format that they put in place was a new format
23 back in 2006. It's a digital switch and an air interface called
24 passport that Motorola makes, so years of interacting with the
25 Pinnacle management, in seeing their filings and speaking with, you

1 know, their people over the years, I mean, they built, is it maybe
2 20 or 22 sites throughout the state of New Jersey, not just on the
3 incumbent sites of Maritime, but also Maritime and the geographic
4 market owns the southern half of New Jersey.

5 JUDGE SIPPEL: But are they currently operating those
6 sites?

7 THE WITNESS: It's my understanding that they are
8 operating throughout the state of, throughout New Jersey at those
9 20 or 22 stations.

10 JUDGE SIPPEL: Well, how do you, how do you get that
11 understanding? What's the basis for your understanding?

12 THE WITNESS: Well --

13 MR. STENGER: Your Honor?

14 THE WITNESS: Well, I don't actually go to New Jersey and
15 pick up a radio, but when I drive up the turnpike I see the signs
16 that say icy road ahead. My understanding is that those signs and
17 the roadside crews use those radios, so it's secondhand knowledge.
18 In other words, I see the payment come from Pinnacle, I see their
19 filings, I talk to their leadership. I don't actually go out to
20 these sites and, you know what I mean?

21 JUDGE SIPPEL: No, but you didn't go out to this site
22 either.

23 THE WITNESS: Right.

24 JUDGE SIPPEL: In this Exhibit 49 and 50, and that's the
25 kind of information you have about these, about what Pinnacle is

1 doing?

2 THE WITNESS: Yes, yes, so I'm not an engineer, Your
3 Honor.

4 JUDGE SIPPEL: I know that.

5 THE WITNESS: Yes, so day to day I rely upon things like
6 --

7 JUDGE SIPPEL: But you're in contact with them?

8 THE WITNESS: Correct.

9 MR. STENGER: Your Honor?

10 JUDGE SIPPEL: Hold on just a second.

11 MR. STENGER: Your Honor, the witness just made a
12 misrepresentation under oath and I --

13 JUDGE SIPPEL: Wait a minute. Now you, you can't --

14 MS. KANE: That is a huge accusation, Your Honor.

15 JUDGE SIPPEL: You have to ask him, you've got to ask
16 him, what, you have to ask him the question.

17 MR. STENGER: Your Honor, he said that they have
18 constructed 22 sites. Not only, not only the, the license sites,
19 but a bunch of other sites. When he said not only the license
20 site, he testified that Pinnacle has constructed the license site.

21 MS. KANE: Your Honor, he's mischaracterizing the
22 testimony --

23 JUDGE SIPPEL: No, no, no. No. The testimony is the
24 testimony. We're not going to, you're, you're, again, you're
25 trying to derail this thing, or you seem to be.

1 MR. STENGER: Well, let me ask him, let me ask him the
2 right questions.

3 JUDGE SIPPEL: When I finish you can ask questions. Good
4 lord, man. So, to get this back in context, you're convinced
5 sitting here today that Pinnacle is operating these, these
6 properties in the state of New Jersey, all of that, the
7 authorizations in New Jersey? You're convinced of that?

8 THE WITNESS: Yes. And as I testified yesterday,
9 Pinnacle is not at the site in Perrineville on the Claridge House,
10 which had maintained and had the rooftop access. They took the
11 equipment off and they'd lower sites around in the state of New
12 Jersey. The Perrineville site is now a rock quarry, and so that
13 license site is not operated by Pinnacle. It's, those are license
14 sites which are owned on the license by Maritime, but Pinnacle is
15 not operating from those high sites, it's operating its 20 or 22
16 site throughout the state to serve those areas that are the Garden
17 State Parkway, the New Jersey, and the Meadowlands.

18 JUDGE SIPPEL: All right, stop right there. Are they,
19 are these fill-in sites? These would be fill-in sites?

20 THE WITNESS: They would be fill-in sites, yes.

21 JUDGE SIPPEL: Thank you. That's all I want to hear.
22 And would there be fill-in sites with respect to other locations
23 that Pinnacle is broadcasting from in New Jersey? There wouldn't
24 be others?

25 THE WITNESS: Yes, and on the 2008 agreement that I

1 referenced, which is sort of the master lease.

2 JUDGE SIPPEL: Yes.

3 THE WITNESS: There's an Exhibit B, I believe it is,
4 which has all the contours of the licensed sites, and the Pinnacle
5 and the agreement to protect the Pinnacle operations, and those are
6 in evidence, that's all part of those leases.

7 JUDGE SIPPEL: That, that, is that attachment B, is that
8 to the lease? Attachment B to the lease?

9 THE WITNESS: Yes, Your Honor.

10 JUDGE SIPPEL: And that's, so we know exactly what the,
11 what the story is as far as fill-ins?

12 THE WITNESS: I believe so, Your Honor, yes.

13 JUDGE SIPPEL: Pretty sure?

14 THE WITNESS: Yes, and Pinnacle also would have an
15 engineer here to testify later about their own system with
16 firsthand knowledge. And I'm sure that --

17 JUDGE SIPPEL: Oh, I want to see how much, how much you
18 know and how much you can help. We'll get to that at that time.
19 All right. You have, do you have any other properties that you
20 want to ask about, Pinnacle is pretty well covered. Do you have
21 any other questions about other properties that you wanted to ask
22 him Mr. Stenger?

23 MR. STENGER: I just want to make sure that it's clear on
24 the record that the --

25 JUDGE SIPPEL: Well, don't tell me what's clear in the

1 record.

2 MR. STENGER: Okay.

3 JUDGE SIPPEL: The record's going to speak for itself,
4 you're not going to speak to the record.

5 MR. STENGER: Okay, here's my question, then.

6 JUDGE SIPPEL: A specific question about a specific
7 property.

8 MR. STENGER: Besides this, by properties I assume you
9 mean the licensing?

10 JUDGE SIPPEL: Organizations, give it a name.

11 MR. STENGER: Besides the, besides the ones that he just
12 testified about, Pinnacle, Claridge House.

13 JUDGE SIPPEL: Pinnacle, go ahead.

14 MR. STENGER: Claridge House, the quarry, there was a
15 third one. What about the other authorized sites? Is Pinnacle
16 operating, actually operating any of the other licensed stations of
17 Maritime under WRB374?

18 THE WITNESS: No.

19 MR. STENGER: Thank you. Pinnacle is operating what you
20 would call fill-in sites, correct?

21 MS. KANE: Objection. Asked and answered.

22 JUDGE SIPPEL: That's correct. I asked it and answered,
23 and he answered.

24 MR. STENGER: All right, then, Your Honor, I don't have
25 anything further on that one.

1 JUDGE SIPPEL: Is he excused?

2 MR. STENGER: I thought you were asking him questions
3 about his business plans. He said that he was going to talk about
4 Choctaw. I forget what he said but he was going to talk about one
5 plan first and then another plan. I don't know if he's finished
6 his answer, his long answer or not.

7 JUDGE SIPPEL: You were objecting to his long answer.

8 MR. STENGER: Well, I objected to it to the extent that
9 it wandered off from the 16 stations, so maybe we should ask him
10 the question do you have anymore testimony about the plans to put
11 the 16 authorized stations back into service? That would be my
12 question.

13 THE WITNESS: Yes, so as I continue, so there's Choctaw
14 and there's Maritime, and I talked about Choctaw's overall plan
15 with relative to the acquiring of the spectrum and operating --

16 JUDGE SIPPEL: Well, wait a minute. You answered the
17 question yes.

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: And that's all you were asked. Is there
20 any follow up on that?

21 MR. STENGER: [REDACTED]

22 THE WITNESS: [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

JUDGE SIPPEL: Okay, you answered the question. Pretty clear answer. Any follow up?

MR. STENGER: [REDACTED]

[REDACTED]

JUDGE SIPPEL: [REDACTED]

MR. STENGER: [REDACTED]

[REDACTED]

the [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

JUDGE SIPPEL: [REDACTED] [REDACTED]

[REDACTED]swer

[REDACTED] [REDACTED]

MR. STENGER: [REDACTED]

[REDACTED]

JUDGE SIPPEL: [REDACTED]

MR. STENGER: [REDACTED]

JUDGE SIPPEL: The per se. He's answered the question. He's answered the question very clearly. And if you can't follow what the testimony is five seconds ago that's not my fault. It's not my job to do that for you.

MR. STENGER: Well, the items that he just referred to, are they in the record? Have they been produced?

MS. KANE: Objection, Your Honor. Who's he asking this question to?

1 MR. STENGER: Mr. Reardon.

2 THE WITNESS: Me.

3 MR. STENGER: [REDACTED]

4 [REDACTED]

5 JUDGE SIPPEL: [REDACTED] [REDACTED]

6 [REDACTED]

7 MR. STENGER: Per se.

8 JUDGE SIPPEL: Per se or any which way.

9 MS. KANE: Your Honor, now he's just being argumentative.

10 JUDGE SIPPEL: [REDACTED]

11 MR. STENGER: [REDACTED] [REDACTED]

12 Q [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 THE WITNESS: [REDACTED]

17 JUDGE SIPPEL: [REDACTED]

18 THE WITNESS: [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 JUDGE SIPPEL: [REDACTED]

22 THE WITNESS: [REDACTED]

23 [REDACTED]

24 JUDGE SIPPEL: [REDACTED]

25 [REDACTED]

1 THE WITNESS: Yes, Your Honor.

2 JUDGE SIPPEL: Okay, let's move back to Maritime.

3 THE WITNESS: There were really only three main users of
4 the AMTS band today. They involve oil and gas industry, utilities,
5 and transportation. So Maritime continues to develop those
6 opportunities. I regularly attend on the transportation side every
7 three months, the American Association of Railroad Positive Train
8 Control Committee meets. The last meeting was two months ago in
9 Pueblo, the next one is at VNSF offices in Dallas. We discuss
10 positive train control and the need for spectrum -- additional
11 spectrum. You may recall I testified that the railroads own
12 through PTC 220, LLC, which is an LLC, a consortium of the six
13 freight railroads, they own a little bit of 220 to 222 megahertz
14 spectrum for positive train control.

15 JUDGE SIPPEL: All right, but that's going too far
16 afield. What we're trying to find out, and Mr. Stenger shared my
17 interest --

18 MS. KANE: Your Honor, Mr. Stenger has just left the
19 courtroom.

20 JUDGE SIPPEL: He can go.

21 MS. KANE: I just want it noted for the record so that
22 we're not unduly delayed.

23 JUDGE SIPPEL: Thank you. No, no, we're not delayed.
24 He's out. He'll be back. Is there any other documentary evidence
25 in some form that establishes exactly what Maritime intends to do

1 with these 16 authorizations?

2 [REDACTED] [REDACTED] [REDACTED]
 3 [REDACTED] [REDACTED]
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 23 [REDACTED]

24 JUDGE SIPPEL: All right, that's, that's all very
 25 interesting, but it's not really what I'm looking for. If this is

1 so you're painting an incredibly optimistic picture about the
2 future of this AMTS asset if you want. What was, if that's the
3 case, why would you be in bankruptcy? Why wouldn't you be looking
4 for a reorganization or something?

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: I mean, this sounds like you've got a
7 great future in this stuff the way you're, the way you're painting
8 it.

9 THE WITNESS: That's why I'm still here, Your Honor. And
10 we did, we did go through a plan of reorganization. In other
11 words, Mrs. DePriest, the owner of Maritime.

12 JUDGE SIPPEL: Maritime we're talking about now.

13 THE WITNESS: Yes, Maritime filed chapter 11. The
14 creditors of Maritime included some creditors who formed Choctaw,
15 Mr. Trammell and others. They formed Choctaw, they put in a bid.
16 There was another bid by an entity, a third party entity called
17 Counsel Tree. Those two, those two plans of reorganization went
18 forward to a vote in front of the secured and unsecured creditors.
19 Choctaw plan was overwhelmingly voted for over the other plan, the
20 Counsel Tree plan. The Choctaw plan then went forward and got the
21 confirmation of the bankruptcy judge. So this is a situation where
22 the debt that is involved in Maritime, you know, will hopefully, if
23 the plan of reorganization is approved, I'm sorry, if the
24 assignment application is approved, the commission to Choctaw,
25 those debts then would be paid in full, dollar for dollar, except

1 for the debts of the DePriests, which would be discharged, not paid
2 at all under the plan. And so I'm hoping, I hope I'm answering

3 [REDACTED]

4 [REDACTED]

5 JUDGE SIPPEL: Well, that's what I'm trying to get at.

6 [REDACTED] [REDACTED]

7 JUDGE SIPPEL: That's what I'm trying to get at. Now,
8 this, so this seems pretty, take your testimony, your broad
9 testimony, at face value. It seems that Choctaw sees a good
10 investment opportunity and, but is Choctaw trying to, is it a
11 combination of creditors that are trying to reprove their, their
12 losses or their perspective losses, or is this an investment
13 opportunity for Choctaw, or possibly both?

14 THE WITNESS: I believe it's possibly both. Mr. Trammell
15 will be here to testify.

16 JUDGE SIPPEL: I understand.

17 THE WITNESS: He interacts directly with the other
18 members of Choctaw. I never manage the day-to-day, but my hope or
19 my expectation is that because not only is Choctaw made up of
20 secured creditors who want their money back, they're also the debt
21 lenders so that they're putting in money to continue the operations
22 from day to day to do that.

23 JUDGE SIPPEL: What did you call them?

24 THE WITNESS: They are the debtor in possession
25 financiers.

1 JUDGE SIPPEL: Oh, okay.

2 THE WITNESS: So they're paying the bills and keeping the
3 lights on at Maritime under a DIP facility, so as they put the
4 money in the, the debt accumulates somewhat, so not only do they
5 want to get their money back, but I believe they also, of course,
6 want to get their DIP funds back as well.

7 JUDGE SIPPEL: Sure.

8 THE WITNESS: And under the plan of reorganization make
9 sure, of course, that the other secured lenders are paid and the
10 unsecured lenders are paid, and there's a liquidating agent, and
11 this has all been approved by the bankruptcy court. So then I
12 think your question was do they just want their money back or do
13 they also want to go forward. My understanding is, and again, one
14 of the reasons I'm here --

15 JUDGE SIPPEL: It's very speculative now.

16 THE WITNESS: Sure. Is that I'm hopeful that they'll
17 want to continue to employ me and continue to do the things that I
18 testified to under their business plan, you know, which involved

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 JUDGE SIPPEL: So it sounds like they've got a good
23 spouse.

24 THE WITNESS: Thank you.

25 JUDGE SIPPEL: The, the what, you're testifying from two

1 sides on this. You're testifying also with respect to Maritime,
2 and is it sort of like placing your bets, whoever comes up with
3 these assets after it comes out of bankruptcy and everything
4 whether it's Choctaw or, or Maritime, either way it looks like a
5 successful venture.

6 THE WITNESS: Well, there's always the risk that the
7 third could happen and that the licenses could be taken back.

8 JUDGE SIPPEL: Yes, that's true. That's very true.
9 That's very true. But I'm assuming that all things are equal and
10 you're able to go forward, am I seeing it the right way? Am I
11 seeing it realistically or is there, I know that there is that
12 third element. But either way, you're associated with two
13 companies, you're still associated with Maritime, is that correct?

14 THE WITNESS: Yes, sir, I'm an employee of Choctaw and
15 then there's a management or consultant agreement from Choctaw to
16 Maritime.

17 JUDGE SIPPEL: Yes.

18 THE WITNESS: Which allows me to work for Maritime, be
19 here today, for example, and testify on their behalf and, like, the
20 New Jersey Anti-trust proceeding that Maritime prevailed in
21 recently. You know, those sorts of things.

22 JUDGE SIPPEL: Yes.

23 THE WITNESS: So, yes.

24 JUDGE SIPPEL: Well, again, we have go to back again and
25 ask the question, though. Do we have all the information that you

1 can give us with respect to what the current operating plans, the
2 current operating plans and operating in venture of these 16
3 authorizations?

4 THE WITNESS: Hopefully. Yesterday, I testified about
5 the two sites, KAE3, KAE8893 and 13, which were involved in the
6 Evergreen lease.

7 JUDGE SIPPEL: Yes.

8 THE WITNESS: I understand that Mr. Thackeray is not
9 coming on behalf of Evergreen.

10 JUDGE SIPPEL: He's not coming.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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20 [REDACTED]

21 JUDGE SIPPEL: That's okay. You -- that's a way of
22 refreshing everything. Hold on just a second. Does anyone else
23 have any further questions of this witness?

24 MR. STENGER: Yes, Your Honor.

25 JUDGE SIPPEL: Ah, oh, you're --

1 MR. STENGER: I'm still here.

2 JUDGE SIPPEL: I know you are still here.

3 MR. STENGER: I would like to ask him, before we go too
4 far down the road.

5 JUDGE SIPPEL: I thought you were finished because you
6 said that you didn't have anything further.

7 MR. STENGER: Well, I didn't want to interrupt your
8 questioning.

9 JUDGE SIPPEL: No, before you left.

10 MR. STENGER: I had to go out in the hall because Mr.
11 Havens arrived and I put him in the witness room because this is
12 confidential testimony.

13 JUDGE SIPPEL: I'm sorry, but I thought you were
14 finished. What do you want to add?

15 MR. STENGER: Well, I was finished with what I had asked
16 but then he gave additional testimony --

17 JUDGE SIPPEL: Ask the question. Ask the question. Ask
18 a specific question about a specific property.

19 MR. STENGER: The proposals that you referred to that you
20 made to Amtrak and various other railroads for positive train
21 control, were those proposals in writing?

22 THE WITNESS: Yes, the Amtrak responses were in writing
23 and the response to Metro North RFP and the, MBTA, proposal or
24 offer was also in writing. It's been a number of years for that
25 one.

1 JUDGE SIPPEL: That's okay. You've answered the
2 question.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 MS. KANE: Objection, Your Honor. Compound and it's
8 seeking hearsay information. We don't actually have the document
9 in front of him.

10 JUDGE SIPPEL: Well, I'll sustain the objection. I
11 think, but I want, I think there's another way to get at it. Kind
12 of break it down into segments if you can.

13 MR. STENGER: Did any of those, did any of those
14 proposals provide for the railroads to put these specific licensed
15 sites back into operation?

16 MS. KANE: Same objection, Your Honor. It's seeking
17 hearsay information.

18 JUDGE SIPPEL: No, that's okay. He can do that.

19 THE WITNESS: Yes, so Tim Smith is the engineer who
20 produced for the Amtrak --

21 JUDGE SIPPEL: Well, can you answer, before we get to
22 Tim, can you answer his question?

23 THE WITNESS: Well, I don't, I don't recall if in those
24 proposals the specific site would be used by the railroad or
25 needed, or even if the railroad required that information, but I do

1 recall that the way that the Amtrak proposal was responded to was
2 on a county by county basis from D.C. to Boston, and so for every
3 county a map was produced that showed here's the, the contour for
4 the county and it superimposed the Amtrak track upon it.

5 MR. STENGER: Okay. I believe you testified that there
6 was some need to get away from the old technology to the new
7 technology, and the old technology of specific sites to the new
8 technology of geographic areas, isn't that what the commission did
9 when they transitioned AMTS from site-based licenses to geographic
10 licenses?

11 MS. KANE: Objection. Mischaracterizes his testimony and
12 calls for a legal conclusion.

13 JUDGE SIPPEL: Sustained.

14 MR. STENGER: The 16 --

15 JUDGE SIPPEL: You can make that argument in findings or
16 some way else, but not --

17 MR. STENGER: What basis do you have for marketing site-
18 based sites as if they are geographic licenses?

19 MS. KANE: Objection. Lacks foundation.

20 JUDGE SIPPEL: Sustained. If there's are no more
21 questions Mr. Plache has some questions.

22 MR. PLACHE: Just a few.

23 CROSS-EXAMINATION

24 BY MR. PLACHE:

25 Q Mr. Reardon, I wanted to focus in on WRV 374 and the

1 relationship with Pinnacle. You had stated you were the lead
2 person for Maritime, working with Pinnacle negotiating the lease,
3 as to the Pinnacle operations?

4 A Yes.

5 Q When did that begin? When did you begin talking to
6 Pinnacle?

7 A Let's see, the discussions, Mr. Plache, began in the 2005
8 time frame when the WRV 374 license was being assigned to Maritime.
9 I believe the initial, the first lease was signed as Mobex Network
10 Services, LLC to Pinnacle in maybe December of 2005, and then that
11 lease was assigned to Maritime, I believe, in January. So it would
12 have been the 2005 time frame.

13 Q And was that for the statewide network or just for the
14 Meadowlands?

15 A To the best of my recollection that would have been for
16 the Meadowlands.

17 Q So then at some point the system expanded to include the
18 statewide network?

19 A Yes. I believe that second lease may have been in early
20 2006, which would have then expanded to the statewide Jersey
21 Turnpike and Garden State.

22 Q And then both were captured in the 2008 lease?

23 A Yes, sir.

24 Q Good. Could I have the witness look at the 2008 lease?
25 It's Exhibit 53 in the Enforcement Bureau's book.

1 JUDGE SIPPEL: Fifty-three?

2 MR. PLACHE: Yes.

3 JUDGE SIPPEL: Is it out there?

4 CROSS-EXAMINATION

5 BY: MR. PLACHE

6 Q And if you could, turn to attachment B.

7 MS. KANE: It's in the confidential book, Your Honor.

8 MR. PLACHE: It's in the confidential book.

9 JUDGE SIPPEL: Okay.

10 MR. PLACHE: Thank you, Your Honor.

11 JUDGE SIPPEL: Is the party still empty out there? Just
12 check.

13 MR. STENGER: Yes, I asked Mr. Havens to wait in the
14 witness room.

15 JUDGE SIPPEL: That's right, that's what he should be
16 doing. Unless he wants to be in -- Oh, please leave that open if
17 you don't mind. It's getting a little, the air is getting stale in
18 here. Again, what are you testifying to now? Exhibit -- this is
19 Bureau Exhibit 53?

20 MR. PLACHE: Yes, Your Honor.

21 JUDGE SIPPEL: In the protected version, in the non-
22 confidential version.

23 MS. KANE: The non-public, Your Honor.

24 JUDGE SIPPEL: Non-public.

25 BY MR. PLACHE:

1 Q If you could turn to Exhibit A and just to clarify,
2 there's two pages to Exhibit A.

3 A Yes.

4 Q So the first page of the Exhibit A, what does that show?
5 Are those the frequencies being operated at the Meadowlands? Is
6 that what that is?

7 A I believe Exhibit A shows the, I counted 19 sites,
8 including the Meadowlands.

9 Q Okay, so the second page of Exhibit A are the other sites
10 being operated?

11 A Yes, I believe that this is the footprint that is
12 reflected from the operation of those sites.

13 Q Okay.

14 A And I believe that the purpose of this was to show where
15 the system is operating and to make sure that no other leases or
16 commitments were made by Maritime to impinge upon the system, if
17 you will.

18 Q Right.

19 A And then that's reflected, I believe, again, in the next
20 page, Mr. Plache. Excuse me if I'm jumping ahead of your
21 questions.

22 Q That's where I was going, I think.

23 A The next few pages show --

24 Q So that's the map with the blotches on it, the map of New
25 Jersey and those blotches represent what?

1 A Represent all of the operations of the, of the combined
2 system of the New Jersey turnpike, the Garden State Parkway, and
3 the Meadowlands.

4 Q Okay. Okay.

5 JUDGE SIPPEL: Hold on just a second. Mr. Stenger, you
6 don't have a copy of this do you?

7 MR. STENGER: No, I don't, Your Honor.

8 JUDGE SIPPEL: Do you want to ask for it or not?

9 MR. STENGER: Thank you, Your Honor, yes, I'd like to see
10 what, I can look over, look at one while he's testifying about it
11 if someone has one that's available.

12 MR. PLACHE: I think I might have an additional copy.

13 JUDGE SIPPEL: Is it not the same as the one you got off
14 of Pacer?

15 MR. PLACHE: Well, he didn't know because he didn't have
16 it set aside.

17 JUDGE SIPPEL: Oh, okay.

18 MR. PLACHE: I would have thought about that. It's just
19 53 you need?

20 MR. STENGER: Okay, 53.

21 MR. PLACHE: Or do you desire another?

22 MR. STENGER: Fifty-three.

23 JUDGE SIPPEL: Fifty-three is it.

24 MR. STENGER: Yes.

25 MR. PLACHE: For the record, I'm giving Mr. Stenger the

1 confidential version of Exhibit 53.

2 JUDGE SIPPEL: You got that, Mr. Stenger?

3 MR. PLACHE: May I continue?

4 JUDGE SIPPEL: Yes, sir. I'm sorry.

5 BY MR. PLACHE:

6 Q Okay. So these, you had characterized these watches,
7 these locations as fill-in sites or fill-in sites?

8 A I believe I believe so.

9 Q Okay.

10 A I believe that's what I said.

11 Q That's how you characterized?

12 JUDGE SIPPEL: Well, who would know for sure?

13 THE WITNESS: Well, I think I was asked are those fill-in
14 sites or were those at, are those at the licensed location and I
15 said they would be, I guess, considered fill-in sites.

16 MR. PLACHE: So --

17 JUDGE SIPPEL: So would somebody know, I'm sorry, sir,
18 would somebody know for sure or Mr. Smith know for sure?

19 THE WITNESS: I feel like I know with some certainty
20 that, that they're not operating transmitters at the license sites,
21 which are high up.

22 JUDGE SIPPEL: Yes.

23 THE WITNESS: But instead they're operating at these
24 lower, more like a cellular system where you're lower down and you
25 really use that --

1 JUDGE SIPPEL: At the fill-in sites?

2 THE WITNESS: Or however they're characterized at these
3 sites.

4 JUDGE SIPPEL: Well, are they fill-in? I mean, can we
5 come to an agreement on that?

6 MR. PLACHE: Well, I'd like to ask a few more questions.

7 JUDGE SIPPEL: I don't blame you.

8 MR. PLACHE: Okay.

9 JUDGE SIPPEL: Go ahead, sir.

10 BY MR. PLACHE:

11 Q Would these fill-in sites all within the contour of
12 actual licensed locations that are listed on the license itself?

13 A Yes.

14 Q And we've heard testimony that there were six licensed
15 locations that would form a contour that would protect these fill-
16 in sites, and do you know what those six are or did they include
17 Selden, Perrineville, Valhalla, Verona, World Trade, and Allentown?

18 A Yes. I believe it's WRV374 14, 16 --

19 Q Fifteen?

20 A Twenty-five, 15, 18, and 33, which is the World Trade
21 Center site.

22 Q Okay. Okay. So, and just to summarize, the fill-in
23 sites fall within the combined contour that would be created by the
24 six licensed locations that you just mentioned?

25 A Yes.

1 Q And that's what you mean by fill-in sites?

2 A Yes.

3 Q Is there a reason why, to your knowledge, was there any
4 reason why Pinnacle chose to design a network using fill-in sites
5 in this way rather than only the six locations that had a license?

6 A Yes. Yes, sir, and there was a similar experience in
7 Orlando where another radio company built 14 fill-in sites within
8 two license sites that were operated by Mobex. In other words, you
9 want to go lower down, instead of being high, you want to go lower
10 down so that you can reuse the frequencies because these
11 frequencies propagate very far, so if you're high and you have a
12 high power it goes too far to be able to reuse it, so you want to
13 go lower down. That's my non-engineering understanding of why you
14 would build lower fill-in sites.

15 Q And is that a more efficient way to operate the spectrum
16 or a less efficient way?

17 A My understanding is it would be a more efficient way to
18 operate the spectrum.

19 Q Okay. And --

20 MR. STENGER: Your Honor, I don't want to interrupt this
21 questioning, but I do want to state an objection.

22 JUDGE SIPPEL: Don't interrupt.

23 MR. STENGER: I do want to state an objection.

24 JUDGE SIPPEL: No, not until the end. You can redirect.
25 Go ahead, Mr. Plache.

1 BY MR. PLACHE:

2 Q Okay. Thank you. Could Maritime, if it so chose to do
3 so, could Maritime add the fill-in location to the license WRV374?
4 Could Maritime do that? Is there any reason why Maritime could not
5 do that?

6 A I believe, well, I don't know. I don't know. I believe
7 that it could, but I'm, I'm not 100 percent sure.

8 Q Okay. To your knowledge, though, is it okay to operate
9 the fill-in sites without amending the license?

10 A Yes.

11 JUDGE SIPPEL: I'm sorry, I didn't hear that. Without a
12 what?

13 BY MR. PLACHE:

14 Q Is it okay to operate from the fill-in sites without
15 amending the license to add the fill-in sites along with the actual
16 license?

17 A Yes, and my understanding of that, Mr. Plache, goes back
18 to 2003 when at the time Dewana Terry Spite issued a letter to the
19 counsel for Mobex, which was my employer, stating in the case of
20 Boston that the Boston location fit within the Rehoboth contour,
21 and so that that fill-in site could be operated without a separate
22 authorization being needed. So my understanding is based upon that
23 letter from the head of the wireless bureau in 2003.

24 Q Okay, thank you. Do you know, did Pinnacle make a
25 payment to Maritime for use of the spectrum?

1 A Yes, I believe there was a payment for the New Jersey
2 Sports and Entertainment Authority and then a payment for the, by
3 the New Jersey Turnpike Authority, both of those payments were made
4 by Pinnacle, which was the lessee of the spectrum.

5 Q And what did the payments total? What was the amount?

6 [REDACTED]

7 [REDACTED]

8 Q That's good enough. Did you ever discuss with Pinnacle
9 having the licensed locations go on the air to serve subscriber
10 units, actual, you know, operations at the licensed locations as
11 opposed to just the fill-in locations? Did you ever have any kind
12 of discussions with Pinnacle about that?

13 A Yes.

14 Q Did Pinnacle, what did Pinnacle say about that?

15 A Well, in the case of the, the Verona site, and I forget
16 the number, if it's 18 or 16, whatever that site is, WRV374 in
17 Verona, that Pinnacle actually managed that site, and so, the
18 decision was made, that that site was not an optimal site, it was
19 too high and would interfere with the interference, it would
20 provide interference to the system. Similar discussions were had
21 relative to the World Trade Center area as well, so Pinnacle, you
22 know, there was concern of interference, I guess, would be the
23 answer to that.

24 Q So Pinnacle said that if, if Maritime were to operate at
25 the licensed locations it would cause interference to Pinnacle's

1 operations or the Turnpike Authority and the Meadowlands and all
2 these fill-in sites, the 20 fill-in sites?

3 A That's my recollection, yes.

4 Q And did you agree with that? Were you convinced? Did
5 you --

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]

20 Q You did answer the question, thank you. Do you, do you
21 know how much money may have been spent by Pinnacle in building out
22 the turnpike system?

23 A I don't know. I recall that there was a newspaper
24 article when Pinnacle first got the award from the state or from
25 the turnpike authority, and I believe that the award was somewhere

1 around, maybe, that the award for Pinnacle to, you know, to build
2 out the system was somewhere around 12 million dollars, perhaps,
3 initially for the New Jersey Turnpike portion of it, but I don't
4 know how much more it ended up being because it sounds like that's
5 just a beginning.

6 MR. PLACHE: That's all I have. Thank you.

7 THE WITNESS: Thank you.

8 JUDGE SIPPEL: Anyone else have anything further?

9 MR. STENGER: Yes, I do.

10 MS. KANE: Your Honor, we just want to note that Mr.
11 Reardon is the bureau's witness, and he's been cross-examined by
12 Mr. Stenger, he's now been cross-examined by Mr. Plache, and you
13 know, unless we were going to have redirect we're unclear how it is
14 that Mr. Stenger would be able to do an additional cross of Mr.
15 Reardon.

16 MR. STENGER: I want to cross-examine him about the
17 testimony he just gave. I'm not going to go back and cross-examine
18 him about anything else. I'm just going to cross-examine him about
19 what he just said.

20 JUDGE SIPPEL: You just cross-examine -- well, yes, but
21 you had the cross-examination and you were finished.

22 MR. STENGER: It's, it's --

23 JUDGE SIPPEL: I disagree because --

24 MS. KANE: This would be a second cross-examination and
25 that just seems, you know, obviously, you have the discretion, Your

1 Honor, to organize the crosses as you see fit, but he's already had
2 his opportunity to cross, and Mr. Plache has now had an opportunity
3 to do a cross.

4 JUDGE SIPPEL: Mr. Plache, yes, I understand it, but --

5 MR. STENGER: When I tried to object to his questions
6 the, the judge told me that I would have a chance to ask him
7 questions.

8 JUDGE SIPPEL: Yes. Cross-examination, unless you're
9 representing the witness. Are you his client? You're not his
10 client. I don't know. This is mind boggling. How many questions
11 do you have, give or take?

12 MR. STENGER: Two questions.

13 JUDGE SIPPEL: Ask the first one.

14 BY MR. STENGER:

15 Q Okay, question number one --

16 JUDGE SIPPEL: This is all with respect to his testimony
17 with Mr. Plache, right?

18 MR. STENGER: Right.

19 JUDGE SIPPEL: Okay.

20 BY MR. STENGER:

21 Q I believe you testified about the New Jersey sports and
22 exposition authority. They have their own 220 megahertz license,
23 isn't that true?

24 MR. PLACHE: Objection.

25 MS. KANE: Objection, that's outside the scope of his

1 cross-examination

2 JUDGE SIPPEL: Sustained.

3 BY MR. STENGER:

4 Q And the state of New Jersey Transit Authority, they have
5 their own 800 megahertz license, right?

6 MR. PLACHE: Objection.

7 MS. KANE: Same objection, Your Honor.

8 JUDGE SIPPEL: Sustained. Only what he testified to with
9 Mr. Plache.

10 MR. STENGER: He testified that the exposition authority
11 and the New Jersey Turnpike Authority --

12 MS. KANE: Your Honor, now he's characterizing testimony
13 and it will be on the record.

14 MR. STENGER: We're using Maritime spectrum.

15 JUDGE SIPPEL: You've lost confidence in your recall
16 abilities. Are you finished or do you have a specific question
17 that he testified to?

18 MR. STENGER: I just asked him if they're not, in fact,
19 using their own license and not the Maritime license. Here's a
20 copy of the New Jersey --

21 JUDGE SIPPEL: Whoa, whoa, whoa --

22 MS. KANE: Whoa, whoa, Your Honor, what is it --

23 JUDGE SIPPEL: Wait, wait a minute. Wait a minute.
24 You're way out of hand. I'm going to allow redirect. Any
25 redirect?

1 MS. KANE: I don't know that we have any redirect, Your
2 Honor.

3 JUDGE SIPPEL: Anybody?

4 MR. KELLER: I have one or two questions and Mr. Kirk may
5 have one.

6 JUDGE SIPPEL: All right, well, let me tell you what I
7 have in mind. I'm right now thinking of taking a break for lunch,
8 and who is the next witness that's coming in?

9 MS. KANE: We're going to call Mr. Allen after lunch,
10 Your Honor, so we can accommodate his schedule.

11 JUDGE SIPPEL: All right. What I'm thinking of is that,
12 that we may want to ask Mr. Reardon to stay around, and you could
13 do your redirect after lunch if you want.

14 MR. KELLER: Well, I'm only going to take a few minutes.

15 JUDGE SIPPEL: All right. The reason I was thinking of
16 if we had a need for him again in connection with any subsequent
17 testimony, but I was thinking more of Mr. Smith.

18 MR. KELLER: Well, I'm not, on that score, Your Honor,
19 let me tell you two things. First of all, Mr. Reardon is local.
20 He lives in the area. Number two, Maritime is willing to reserve
21 the right to possibly recall him later as a rebuttal witness
22 anyway, so he'll be around, he'll be available.

23 JUDGE SIPPEL: All right. Do you want to do the redirect
24 now and then let him go and then we can call him back?

25 MR. KELLER: Yes, that's what I would propose.

1 JUDGE SIPPEL: That's fine.

2 MS. KANE: And, Your Honor, as I stated, I do not believe
3 the bureau has any specific redirect questions, but if I recall,
4 yesterday morning Mr. Keller reserved the right to redirect the
5 Maritime witnesses.

6 JUDGE SIPPEL: Yes, he did.

7 MS. KANE: So we tender the witness to Mr. Keller.

8 JUDGE SIPPEL: Sorry, I was a little bit hasty in here
9 and letting this go too far. Sorry, go ahead.

10 BY MR. KELLER:

11 Q [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A So why did Maritime file chapter 11 or why?

19 Q Yes.

20 A Okay well I guess two things. The first is that there's
21 been a significant amount of legal cost related to bi-coastal
22 litigation, defending the company in California. Mr. Havens had
23 sued Maritime. He lost their appeal, lost their, there's a written
24 hearing by the Supreme Court denying his appeal to the Supreme
25 Court. We've just finished with about five years of litigation in

1 New Jersey in which all of his claims, except a, a conspiracy,
2 Sherman Act claim were dismissed by the, by the judge, but
3 nonetheless, you know, it led to a nine day trial in which he was
4 not successful.

5 I believe that from the period of time when Maritime was
6 founded through the chapter 11, which was from 2005 to 2011, that
7 six year period, I believe the record shows that Mr. Havens filed
8 over 500 pleadings at the FCC, so more than one a week against
9 Maritime Communications. So there were huge legal bills involved.
10 At the same time, the marketplace for a traditional terrestrial
11 Maritime Telecommunications Services used by tow boats and barges
12 along the Mississippi, which was serviced by Maritime through its
13 water top subsidiary. That marketplace eroded very quickly, as
14 cellular operators increased their coverage of areas, not just St.
15 Louis and New Orleans, but all of the areas in between, and as
16 satellite providers, like Global Star that took over, so there was
17 a marketplace shift where the revenues decreased from the
18 traditional Maritime operation base, and there was a very high
19 litigation cost.

20 Q And my other question on that line is what effect has the
21 recurrent cloud, if you will call, caused by this proceeding, this
22 license revocation proceeding had on your ability to, to maintain
23 existing contracts and negotiate new ones?

24 A Yes, sir, at Maritime there are a number of pending
25 contracts, and there is, on the caption for the hearing there are

1 a number of those companies like Duquesne Light, DEMCO is Dixie
 2 Electric, Puget Sound Energy, Southern California Regional Rail.
 3 To date, none of those contracts have closed. Not a single license
 4 has been sold by Maritime since the time it owned it, so it's, in
 5 fact, a number of transactions were entered into and then the buyer
 6 or lessee walked away because of the regulatory challenges and the
 7 uncertainty. So it's put a significant cloud -- It's kind of like
 8 if you bought a house and somebody that you outbid for the house
 9 stood out on the curb and said, you know, they cheated me and they
 10 lied and they camped out there on your curb, next to the street.

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]

22 the lease. Have you spoken to anybody from Evergreen, and if so,
 23 what did you learn?

24 A Yes, I called Bill Thackeray sometime maybe in August of
 25 this year. Bill Thackeray is the person with whom I interacted at

1 Evergreen School district back in 2008 and 2009 when the lease was
2 signed. I believe he also made a sign on the lease, so maybe, that
3 may not be right. I could find that out. I called him and I asked
4 him, you know, how things were going and I asked him about the
5 status of the lease, and he said that he believed that the license,
6 the license that Maritime owned was in some jeopardy, that he had
7 been contacted by the, by officials at the FCC who called him out
8 of the blue and basically, you know, said, essentially there's a
9 protest against this license. There's a possibility that the
10 license won't be there, and so that information startled him. Not
11 enough for him to call me, apparently, but it startled him enough
12 for him to, I guess, start to make other plans for the school bus
13 system.

14 Q Okay, that's fine. In that light, I do have one other
15 half question. You've also testified that when you were given this
16 information you started making other arrangements or prepared to
17 make other arrangements for those two sites. Very briefly, what
18 arrangements have you made?

19 A So, I called the site owners or managers in this case,
20 Day Wireless in Milwaukee, Oregon, which is near Portland, and I
21 acquired about the status of the equipment. I talked to Dean
22 Ballew, who is the manager out there. Dean checked into the
23 equipment and then got back to me and said that in one location he
24 believed the equipment was actually still on the mountaintop, it
25 had never been removed, and then the other that it had been removed

1 by Day Wireless for non-payment by Maritime from the site location,
2 but that it was sitting in a warehouse. So that led me then to ask
3 him to prepare leases for the restoration of those sites.

4 MR. KELLER: Thank you. I don't have anything further.

5 JUDGE SIPPEL: All right.

6 MR. KELLER: Thank you.

7 JUDGE SIPPEL: Okay, so you're excused as a witness.

8 THE WITNESS: Thank you, Your Honor.

9 JUDGE SIPPEL: Thank you very much.

10 MR. ENGEL: Your Honor, for clarification is this a
11 temporary or permanent excusal?

12 JUDGE SIPPEL: Well, he's going to be recalled, to my
13 understanding.

14 MR. KELLER: He may.

15 JUDGE SIPPEL: He may.

16 MR. KELLER: He may, depends on what transpires. We may
17 recall him as a rebuttal witness.

18 JUDGE SIPPEL: Well, I'd like to have him kind of on a
19 string, if you will. Since you live locally it shouldn't be any
20 inconvenience, but it may be necessary to call you back if, we'll
21 try to work around whatever schedule you use.

22 THE WITNESS: I'm here at your disposal.

23 JUDGE SIPPEL: Thank you very much.

24 THE WITNESS: Thank you, Your Honor.

25 JUDGE SIPPEL: Okay. The time is 12, I'm going to rough

1 it out, 12:47.

2 MR. KELLER: Eleven.

3 JUDGE SIPPEL: 11:47, thank you, 11:47, so that should
4 conclude our in camera session, and we'll start off on the public
5 record when we reconvene for lunch.

6 MR. KELLER: Very well.

7 JUDGE SIPPEL: Is that okay? And we'll be back from lunch
8 at let's say one o'clock. Yes, one o'clock.

9 MR. STENGER: Before we depart, Your Honor --

10 JUDGE SIPPEL: Yes, sir.

11 MR. STENGER: May I just know the complete changes that
12 the bureau is making in the calling of their witnesses? I believe
13 they said that --

14 JUDGE SIPPEL: Well, that's between you. Talk it over
15 with counsel.

16 MR. STENGER: Okay.

17 JUDGE SIPPEL: I'm out of here. Off the record.

18 (Whereupon, the above-entitled matter went off the record
19 at 11:49 a.m. and resumed at 1:03 p.m.)

20 JUDGE SIPPEL: Good afternoon.

21 MR. ENGEL: Good afternoon.

22 JUDGE SIPPEL: Please be seated. If there's nothing, no
23 preliminary matters I guess we can just call our next witness. We
24 are on the record.

25 MR. STENGER: I have a preliminary matter, Your Honor.

1 Are we on the record?

2 JUDGE SIPPEL: We are on the record.

3 MR. STENGER: My witness that's supposed to come
4 tomorrow, Mr. Calabrese.

5 JUDGE SIPPEL: Yes.

6 MR. STENGER: He sent me an email and he said that when
7 he asked for his salary payments in 2010 that Mr. Reardon filed a,
8 what he characterized, and this is him not me, but he characterizes
9 as a false police report against him and there's an outstanding
10 arrest warrant caused by Mr. Reardon and that if he comes to town,
11 he's concerned that Mr. Reardon is going to have him arrested, so
12 he wanted me to raise this issue with Your Honor and ask you, you
13 know, what he should do under those circumstances.

14 JUDGE SIPPEL: No jurisdiction here.

15 MR. STENGER: Well, he may not be able to appear unless
16 Mr. Reardon's attorney can somehow assure us that the arrest
17 warrant has been --

18 MR. ENGEL: And, Your Honor, I can represent in good
19 faith that our information is that Mr. Calabrese threatened, has
20 threatened three of our witnesses, but specifically threatened Mr.
21 Reardon. He filed a police report. What the police did with that,
22 that's certainly, Mr. Reardon and we can't control that, but
23 that's, that's our understanding of it. I believe Mr. Keller has
24 a copy of the police report. We were not intending to bring this
25 before Your Honor, but that, it's not our doing. If there's an

1 MR. ALLEN: Thank you.

2 JUDGE SIPPEL: And Ms. Kane will present you with your
3 direct evidence.

4 MS. KANE: I will. Your Honor, if I could.

5 DIRECT EXAMINATION

6 BY MS. KANE:

7 Q Mr. Allen, could you please state your full name for the
8 record?

9 A It's Laurence Leroy Allen.

10 Q And who do you currently work for?

11 A Pinnacle Wireless.

12 MS. KANE: Your Honor, may I approach the witness?

13 JUDGE SIPPEL: You certainly may.

14 BY MS. KANE:

15 Q Your Honor, I'd like the record to reflect that I've just
16 handed the witness what has been previously admitted as Exhibit, EB
17 Exhibit 1G, and Mr. Allen, I would like you to take a look at that
18 document.

19 JUDGE SIPPEL: Now, is he being proffered as your witness
20 or is this a Pinnacle witness?

21 MS. KANE: We are proffering Mr. Allen as a Bureau
22 witness, Your Honor.

23 JUDGE SIPPEL: Thank you. Okay. And I see he's being
24 represented in court today by counsel?

25 MS. KANE: He is, Your Honor.

1 BY MS. KANE:

2 Q Mr. Allen, do you recognize this document?

3 A Yes, I do.

4 Q And can you describe this document?

5 A This is the testimony that I swore to in September of
6 this year.

7 Q And then the last page of that document is that your
8 signature?

9 A Yes, it is.

10 MS. KANE: Thank you very much. Your Honor, we tender
11 the witness for cross-examination.

12 JUDGE SIPPEL: Okay, who wants to go on cross? Mr.
13 Stenger?

14 MR. STENGER: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. STENGER:

17 Q Mr. Allen, who prepared your written testimony?

18 A I prepared it in conjunction with counsel in earlier this
19 year.

20 Q And which counsel was that?

21 A Our internal corporate counsel and Mr. Plache.

22 Q And who was the internal corporate counsel?

23 A Kim Joel.

24 Q And what about the nero counsel? Did you consult with
25 them?

1 A Not on this, no.

2 Q And what documents did you use to prepare your testimony?

3 A Based on knowledge that I have of the New Jersey Turnpike
4 system.

5 Q Did you review any information in the FCC universal
6 licensing system?

7 A No.

8 Q If you could turn to page two of your testimony,
9 paragraph five. The first sentence of your, of your paragraph says
10 if Pinnacle no longer had access to the spectrum that it leases
11 from Maritime it would likely cause an extended break in service
12 that would have severe public safety consequences, and then the
13 next sentence says New Jersey SEA, that's the New Jersey Sports and
14 Exposition Authority?

15 A Yes.

16 Q Radio network utilizes equipment built specifically to
17 operate in the 220 megahertz band. Now, so you see those
18 sentences?

19 A Yes.

20 Q Okay. Now my question is did you do any research before
21 you made those statements?

22 MS. KANE: Objection, vague.

23 JUDGE SIPPEL: Rephrase the question, like, what did you
24 do to prepare that statement?

25 BY MR. STENGER:

1 A Knowledge that I have of the New Jersey Sports and
2 Exposition Authority system.

3 Q Okay, do you have knowledge that the New Jersey Sports
4 and Exposition Authority has a 220 megahertz license?

5 MS. KANE: Objection, lack of foundation.

6 JUDGE SIPPEL: Cross, he can ask him.

7 BY MR. STENGER:

8 A No, sir.

9 Q Okay, the address of the New Jersey sports and exposition
10 authority, do you happen to know what it is offhand?

11 A No, sir, it's at the Meadowlands.

12 Q If I read you the address of the Meadowlands do you think
13 that would ring a bell?

14 A This is a street address?

15 Q Yes, of the Meadowlands, is it at 50 Route 120 East
16 Rutherford in Bergen, New Jersey?

17 MS. KANE: Objection, he's already asked and answered
18 that question.

19 JUDGE SIPPEL: Well, that's all right. He can ask this
20 question. I don't know for what purpose it is, but it's
21 preliminary. Go ahead and ask the question.

22 BY MR. STENGER:

23 Q Where is the meadow, is the Meadowlands located in 50
24 Route 120 in East Rutherford?

25 A The Meadowlands, Route 120 circles the Meadowlands, so it

1 is Route 3 and Route 17.

2 MR. STENGER: Okay, Your Honor, may I show the witness a
3 copy of a license from the FCC ULS?

4 MS. KANE: Objection, has it been admitted as an exhibit
5 in this case?

6 MR. STENGER: No, it's just a public record document from
7 the ULS.

8 JUDGE SIPPEL: Let me see it.

9 MR. STENGER: For the record, it's a reference copy of a
10 license of the New Jersey Sports and Exposition Authority call sign
11 WQDS 589 for 220 megahertz spectrum at the license location of 50
12 Route 120 East Rutherford, Bergen, New Jersey.

13 JUDGE SIPPEL: For what purpose are you using this?

14 MR. STENGER: I'm using this to question the witness's
15 testimony that if Pinnacle no longer had access to the spectrum it
16 leases from Maritime it would cause an extended break in service at
17 the New Jersey Sports Authority. And New Jersey Sport Authority
18 uses equipment built specifically to operate on 220 megahertz band,
19 and they have their own license, so --

20 MS. KANE: Objection. Now he's testifying, Your Honor.

21 JUDGE SIPPEL: Yes, I know he is. Well, I just disregard
22 this. Don't worry about it. You want to take a look at this?

23 MS. KANE: Well, we would certainly appreciate a copy,
24 yes.

25 MR. PLACHE: I would like to.

1 JUDGE SIPPEL: Do you have extra copies for the

2 --

3 MR. STENGER: I'm sorry, I didn't have it, I was only
4 able to print out one thing over the internet.

5 JUDGE SIPPEL: Well, that's a shame.

6 MS. KANE: Your Honor, it's not part of the admitted
7 record.

8 JUDGE SIPPEL: No, it's not cross-examination.

9 MR. PLACHE: Yes, but he brought cross-examination in to
10 this.

11 MS. KANE: He should at least be able to provide copies
12 to all of the counsel in its table. I mean, that is just common
13 courtesy and common practice.

14 MR. STENGER: I had a number --

15 MS. KANE: That he's asking our witness about documents
16 we haven't seen previously.

17 JUDGE SIPPEL: He doesn't have it, so --

18 MS. KANE: Well, then, he shouldn't be allowed to use the
19 document, Your Honor.

20 JUDGE SIPPEL: Well --

21 MR. STENGER: I had a number of documents delivered here,
22 and inadvertently you can see that there's a whole pile of
23 documents, and inadvertently that one was left out. I apologize.

24 JUDGE SIPPEL: This one was left out?

25 MR. STENGER: Yes, I'm sorry.

1 JUDGE SIPPEL: You have otherwise multi copies of
2 everything?

3 MR. STENGER: Of other documents, but I'm not necessarily
4 going to take up time. The particular one that I wanted to present
5 to you I didn't get copies of by my own mistake.

6 JUDGE SIPPEL: Well --

7 MR. PLACHE: Are there other licenses involved that
8 you're going to try to present too?

9 MR. STENGER: As far as I know the New Jersey Exposition
10 Authority has one 220 megahertz license and that's it.

11 MR. PLACHE: Do you know, do we know anything about this
12 license? Has it been referenced?

13 MR. STENGER: May I state something?

14 MR. PLACHE: I'd love to.

15 MR. HAVENS: Your Honor, could I make a comment?

16 JUDGE SIPPEL: No, no, no, no, not yet.

17 MR. HAVENS: Licenses, can we use them for --

18 (Simultaneous speaking)

19 MR. PLACHE: I don't think having one license means you
20 can't need another license. I just don't know where we're going
21 with this testimony.

22 MS. KANE: I don't either.

23 MR. ENGEL: Your Honor, could we have a proffer why this
24 is relevant and how this witness can verify this information?

25 JUDGE SIPPEL: Let's go off the record and have him,

1 fine, he's testified to it.

2 (Whereupon, the above-entitled matter went off the record
3 at 1:14 p.m. and resumed at 1:17 p.m.)

4 JUDGE SIPPEL: This document contains nothing relevant
5 that pertains to this case, and it was processed out of order
6 without the adequate copies being provided to counsel for a number
7 of reasons. I'm going to return it to Mr. Stenger and ask him to
8 move on to something else.

9 BY MR. STENGER:

10 Q Referring to paragraph seven of your testimony you say
11 without the spectrum authorized under WRV374, Pinnacle would no
12 longer be able to support NJTA's operations in the northern half of
13 New Jersey. Do you see that sentence?

14 A Yes.

15 Q And what research did you do before making that
16 statement?

17 A The --

18 JUDGE SIPPEL: No, you want to ask him on what does he
19 base, on what facts does he base that information.

20 BY MR. STENGER:

21 Q On what facts do you base that statement?

22 A The New Jersey Turnpike Authority's radio system is built
23 of 18 fill in sites, the majority of which are in the northern part
24 of the state. And the Woodbridge STMC, which is Air Traffic
25 Management Center is in the northern part of the state and would

1 not be able to access the system.

2 Q Did you do any research on ULS to see whether the state
3 of New Jersey has other radio licenses that are used for the same
4 purposes?

5 A No, I didn't.

6 Q You said --

7 JUDGE SIPPEL: He said what he thought what he based his
8 statement on.

9 BY MR. STENGER:

10 Q Have you ever been told by the New Jersey state
11 authorities that they're building a statewide radio network using
12 800 megahertz licenses?

13 MS. KANE: Objection, it's seeking hearsay.

14 JUDGE SIPPEL: Sustained. Is that it?

15 MR. STENGER: Yes, Your Honor, I think that's, if I could
16 have a moment to confer with my client?

17 JUDGE SIPPEL: Certainly.

18 MR. STENGER: I think I can say.

19 JUDGE SIPPEL: Off the record. We'll go off the record.

20 (The above-entitled matter went off the record at 1:20

21 p.m. and resumed at 1:21 p.m.)

22 JUDGE SIPPEL: Is that it?

23 MR. STENGER: A couple more questions, Your Honor.

24 JUDGE SIPPEL: How many more?

25 MR. STENGER: Maybe three.

1 JUDGE SIPPEL: Okay, three it is.

2 BY MR. STENGER:

3 Q Mr. Allen, do you have any direct knowledge that the New
4 Jersey Sports and Exposition Authority actually uses AMTS spectrum?

5 A Yes, I do. For their data, daily operations they do,
6 yes.

7 Q Can you explain the basis of your knowledge?

8 A We handle, we have Jersey Sports and Expo on a
9 maintenance contract, so we handle maintenance issues for the
10 Meadowlands as they arise.

11 Q Okay. Well, we had three questions, there's one more.

12 JUDGE SIPPEL: You have two more left.

13 MR. STENGER: Oh, two more left.

14 JUDGE SIPPEL: Go ahead.

15 MR. PLACHE: Objection, Your Honor, they're double
16 teaming the witness.

17 JUDGE SIPPEL: What do you want to ask? Are you moving
18 into a different subject area?

19 MR. STENGER: No, just tell me where it is.

20 JUDGE SIPPEL: Let's stay with Mr. Stenger. You can
21 consult with your client, but, or Mr. Havens.

22 BY MR. STENGER:

23 Q Does Pinnacle have a contract with the New Jersey Sports
24 and Exposition Authority for the use of AMTS spectrum?

25 A I'm not aware if they do.

1 Q He just says he's not aware.

2 JUDGE SIPPEL: One more left.

3 BY MR. STENGER:

4 Q Who would know whether Pinnacle has a contract with the
5 New Jersey Sports and Expedition Authority?

6 MS. KANE: Objection, lack of foundation.

7 JUDGE SIPPEL: Well, that's all right, it's a follow up
8 question. I'm going to permit it. If the witness knows.

9 BY MR. STENGER:

10 A I really don't.

11 JUDGE SIPPEL: That's it. Three and out. Let me ask you,
12 do you, the, the sites, are you, you have sites, AMTS sites that
13 are leased by Pinnacle by Maritime, is that correct?

14 THE WITNESS: Yes, sir.

15 JUDGE SIPPEL: Do you know firsthand knowledge whether
16 these are actually operating today, those sites?

17 THE WITNESS: I do not.

18 JUDGE SIPPEL: Who would know? Or you don't know that?

19 THE WITNESS: I don't know if they are or they aren't,
20 sir.

21 JUDGE SIPPEL: But how do you know if you're servicing
22 these, these sites, how could you not know yes or now as to whether
23 or not they're operating?

24 THE WITNESS: We're servicing the fill in sites, not the
25 actual license site.

1 JUDGE SIPPEL: License, so whether or not the actual
2 license sites are being utilized you don't know.

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: But it's the fill in sites you definitely
5 do know they are?

6 THE WITNESS: Yes, sir, absolutely.

7 JUDGE SIPPEL: How far from the operating sites are they?
8 Do you know?

9 THE WITNESS: Some of them are within short distances,
10 miles.

11 JUDGE SIPPEL: Short distance mile, mile wise, huh?

12 THE WITNESS: Yes, sir.

13 JUDGE SIPPEL: Okay. And how many of these sites are
14 there? How many fill in sites are there?

15 THE WITNESS: Eighteen.

16 JUDGE SIPPEL: Eighteen?

17 THE WITNESS: Yes, sir.

18 JUDGE SIPPEL: And certainly it covers the, the, the
19 complex? Does it go beyond the complex?

20 THE WITNESS: We're talking New Jersey Turnpike
21 Authority's 18 sites, which covers the Garden State Parkway, New
22 Jersey Turnpike north to south end.

23 JUDGE SIPPEL: Okay, we know what that is. That's the
24 53. Isn't that 53 in the book? Am I right?

25 MR. PLACHE: Yes, 53.

1 JUDGE SIPPEL: See if I'm looking at the right book. I'm
2 showing him 53, Exhibit 53. Does that look like it?

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: Okay. And they're all operating?

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: And as you said, yes, okay.

7 THE WITNESS: Yes, sir.

8 JUDGE SIPPEL: All right. I've just shown the
9 witness Exhibit 53, page, what is this, Pinnacle 000056
10 in the confidential version of the Enforcement Bureau's exhibits.
11 That's all the questions I have.

12 MR. PLACHE: I have some questions.

13 JUDGE SIPPEL: You're there with him. There you go.

14 MR. PLACHE: Is he going to get to go?

15 MR. HAVENS: Well, I would like to ask questions.

16 JUDGE SIPPEL: He's going to get a question or two.

17 MR. PLACHE: Okay, let him go if he's --

18 JUDGE SIPPEL: So you all are waiting until he's finished
19 and then you can.

20 MR. PLACHE: Thank you.

21 JUDGE SIPPEL: You might have to patch a few things up.

22 MR. PLACHE: Okay.

23 JUDGE SIPPEL: Now how many questions do you have for
24 this witness?

25 MR. HAVENS: That depends on his answers.

1 JUDGE SIPPEL: Well, that's no, that's --

2 MR. HAVENS: All right, then --

3 JUDGE SIPPEL: All things being considered how many
4 questions you got, one, two, or three?

5 MR. HAVENS: Four.

6 JUDGE SIPPEL: Four?

7 MR. HAVENS: Four.

8 JUDGE SIPPEL: Okay. You can't combine two in one?

9 MR. HAVENS: Compound question.

10 JUDGE SIPPEL: Compound person?

11 MR. HAVENS: No, I didn't say that. Four and I'm not
12 supposed to ask compound questions.

13 JUDGE SIPPEL: All right.

14 MR. HAVENS: All right, then I have four.

15 JUDGE SIPPEL: Okay.

16 MR. HAVENS: Thank you.

17 JUDGE SIPPEL: Try the first. Do any of you know this
18 witness, by the way? Do you know this gentleman?

19 MR. ALLEN: No, sir.

20 JUDGE SIPPEL: All right, this is Warren Havens. He's
21 appearing in this case pro se and he's also appearing through
22 several companies, and also through a lawyer.

23 MR. HAVENS: I'm appearing only pro se myself. Mr.
24 Stenger represents companies in which I'm the president.

25 JUDGE SIPPEL: Which you control. We've gone through

1 that.

2 MR. HAVENS: Okay, I'm stating my position.

3 JUDGE SIPPEL: As far as, but --

4 MR. HAVENS: I'm ready.

5 JUDGE SIPPEL: Yes, I'm just introducing you. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. HAVENS:

8 Q I'm sorry, your name is Mr. Allen?

9 A Yes.

10 Q Mr. Allen, are you aware of public releases from your
11 parent company which are --

12 MR. PLACHE: Objection.

13 JUDGE SIPPEL: Sustained.

14 BY MR. HAVENS:

15 Q Can you explain the fraud admissions --

16 MR. PLACHE: Objection.

17 MS. KANE: Objection, Your Honor.

18 JUDGE SIPPEL: Sustained.

19 MR. HAVENS: I didn't even finish a question.

20 JUDGE SIPPEL: Well, fraud is enough for me. You've got
21 two questions left.

22 MR. HAVENS: Okay.

23 BY MR. HAVENS:

24 Q Do you know that Mike Hayford signed for Pinnacle the
25 contract, well, alleged contract with Maritime?

1 MS. KANE: Objection, outside the scope of his direct
2 testimony and irrelevant.

3 JUDGE SIPPEL: Why wouldn't the contract be relevant?

4 MS. KANE: Who signed it would be irrelevant.

5 MR. HAVENS: It's whether or not there's a legitimate
6 contract and who signed it.

7 JUDGE SIPPEL: Well, this witness can't testify to
8 legitimacy.

9 MR. PLACHE: He can assume if he's seen the contract.

10 MR. HAVENS: I'm asking if he --

11 JUDGE SIPPEL: Has he --

12 MR. HAVENS: Okay, then, has anyone ever signed the
13 Contract?

14 JUDGE SIPPEL: Has he ever seen the contract?

15 BY MR. HAVENS:

16 Q Have you seen, are you aware of a contract between
17 Pinnacle and Maritime Communications?

18 A I have not seen a contract.

19 JUDGE SIPPEL: He's already been asked and answered that
20 question so he doesn't know.

21 MR. HAVENS: Okay, then I, I didn't, didn't --

22 JUDGE SIPPEL: Next question. One left.

23 MR. HAVENS: I only asked one question there.

24 JUDGE SIPPEL: Oh, I counted three. That was his, what
25 did you count, four? Three?

1 MR. HAVENS: I'm up to three, Your Honor.

2 MR. PLACHE: Give him one more.

3 JUDGE SIPPEL: I'll give you one more. I'll give you the
4 benefit of one.

5 MR. HAVENS: Are you the judge here?

6 JUDGE SIPPEL: Mr. Havens?

7 MR. HAVENS: Yes, sir.

8 JUDGE SIPPEL: If you need to talk to me you need to talk
9 to me.

10 MR. HAVENS: Okay, I'm asking you, now you said I could
11 ask four questions. What are the three questions I asked?

12 JUDGE SIPPEL: I'm not going to tell you.

13 MR. HAVENS: All right, then, how many questions did I --

14 JUDGE SIPPEL: I'm giving you a bonus question. Four is
15 correct. I think you have three. Just go ahead and ask the
16 questions. The clock is ticking.

17 BY MR. HAVENS:

18 Q Do you have knowledge that Pinnacle, your or someone in
19 Pinnacle has direct knowledge that the New Jersey Sports and
20 Exposition Authority at the Meadowlands facility, or for its
21 purposes, for coverage at the Meadowlands has in the past used, and
22 to this day, is using the Maritime AMTS spectrum?

23 MR. PLACHE: Objection, he was asked already.

24 MS. KANE: Objection, compound and asked and answered.

25 JUDGE SIPPEL: Okay. I covered that with him. Okay,

1 that's it.

2 MR. HAVENS: Thank you, sir.

3 JUDGE SIPPEL: Wait just a second, here. Mr. Plache is
4 representing your company, well, not your company, but Pinnacle.
5 All right, go ahead, Mr. Plache.

6 MR. PLACHE: Just a few questions.

7 CROSS-EXAMINATION

8 BY MR. PLACHE:

9 Q Mr. Allen, you're a project manager with Pinnacle?

10 A Yes.

11 Q And as a project manager do you have day to day oversight
12 and day to day operations with the New Jersey Turnpike Authority?

13 A Yes, for the systems.

14 Q So, and that, here now what's based on that is that
15 system operating as you described in your testimony?

16 A That system is absolutely operating.

17 Q Okay, and you say I paragraph number three of your
18 testimony that it's operating from fill in locations?

19 A That's correct.

20 Q And you also say that that is because the, the fill in
21 locations allow for better coverage, more efficient spectrum
22 utilization reviews, and the provision of service to users and will
23 be afforded by operating for the locations, the limited locations
24 on WRV374?

25 A That's correct.

1 Q That, is that correct?

2 A Yes, sir.

3 Q And can you explain any of that or can you add to that?

4 Could you explain why that would be?

5 A The Turnpike Authority, for their vehicles going up and
6 down the roadway they need to be in constant communications. There
7 would be gaps in the existing sites where the, in the licensed
8 sites we used, the 18 fill in sites we're not using.

9 Q And are you familiar with the locations of those licensed
10 sites, you know, under that license that we're talking about, that,
11 that, that pertains to the fill in sites?

12 A I have seen the license sites. I know where several of
13 them are, but not exactly.

14 Q You say in your testimony that operations at the licensed
15 locations would interfere with the efficient operation of a fill in
16 site constructed by Pinnacle. Could you explain that at all?

17 A To His Honor's question before with the physical
18 distance, several of these sites are physically close to the
19 turnpike and the parkway, and both sites operating simultaneously
20 would cause interference issues.

21 Q And have you, have you done some kind of, had some kind
22 of engineering study that you've done on this that would support
23 that?

24 A Yes, we have.

25 Q And who did that study?

1 A Pier Com Solutions.

2 Q Okay. And the study concluded what, that there would be
3 co-channel interference or adjacent channel interference, or both?

4 A It would be both.

5 Q Okay. Okay. Thank you.

6 MR. HAVENS: I have a few follow up questions.

7 MS. KANE: Your Honor, Mr. Havens should not be allowed
8 to.

9 MR. HAVENS: Well, I'm asking the judge.

10 JUDGE SIPPEL: No, I get it, no, I get it. No, that's
11 the, that's the end of it.

12 MR. HAVENS: I can't ask further questions?

13 JUDGE SIPPEL: You cannot.

14 MR. HAVENS: Okay.

15 JUDGE SIPPEL: That's everything. The cross-examination
16 of this witness has been completed. You're not to talk about your
17 testimony with other witness. That's all I'm instructing you.

18 MR. ALLEN: Yes, sir.

19 JUDGE SIPPEL: But you're free to talk to counsel and you
20 can leave.

21 MR. ALLEN: Thank you, sir.

22 JUDGE SIPPEL: And wherever you live, have a good trip
23 back.

24 MR. ALLEN: Thank you, sir.

25 JUDGE SIPPEL: Next witness will be?

1 MS. KANE: The next witness we'd like to call, Your
2 Honor, is Tim Smith. If we can go off the record I believe he's in
3 the hearing room and I can go get him.

4 JUDGE SIPPEL: Sure.

5 MR. STENGER: Your Honor, can we take a ten minute, a ten
6 minute break before I do the next witness?

7 JUDGE SIPPEL: Oh, yes, it's, let me see, what time is
8 it? We'll be back at quarter of.

9 MR. STENGER: Thank you, Your Honor.

10 JUDGE SIPPEL: Yes.

11 (Whereupon, the above-entitled matter went off the record
12 at 1:35 p.m. and resumed at 1:44 p.m.)

13 JUDGE SIPPEL: We've got a list of stars here, I need to
14 find out who I need.

15 MR. ENGEL: Your Honor, do you want me to try to find the
16 other parties?

17 JUDGE SIPPEL: Is he, he's got a couple of minutes. I'll
18 give him till quarter of. Let's see.

19 MR. PLACHE: Sorry.

20 JUDGE SIPPEL: That's okay. Yes, don't sue the
21 government for cleaning bills.

22 MR. PLACHE: All right.

23 JUDGE SIPPEL: Okay, we ready to go now?

24 MR. STENGER: Yes, I apologize, Your Honor, I thought it
25 was quarter of.

1 JUDGE SIPPEL: No, you're fine, that's what it was, too.

2 You're fine. Are we set to go?

3 MR. ENGEL: Your Honor, the Bureau is ready.

4 JUDGE SIPPEL: Okay, you may proceed with your next
5 witness, then.

6 MR. ENGEL: Your Honor, the Enforcement Bureau calls
7 Robert Timothy Smith, and I see he's taken the stand, Your Honor.

8 JUDGE SIPPEL: Okay. Direct his attention to the matter
9 at hand.

10 MR. ENGEL: May I approach, Your Honor?

11 JUDGE SIPPEL: Yes, please do. You need to get his name
12 for the record.

13 MR. ENGEL: Are you going to swear in the witness, Your
14 Honor?

15 JUDGE SIPPEL: I will. Thank you for reminding me of
16 that.

17 WHEREUPON,

18 ROBERT TIMOTHY SMITH

19 was called as a witness by The Federal Communications Commission
20 Enforcement Bureau and, having first been duly sworn, assumed the
21 witness stand, was examined and testified as follows:

22 JUDGE SIPPEL: Thank you, sir, please be seated.

23 MR. ENGEL: Counsel, I want to reference I'm holding EB
24 Exhibit 1C. I believe everybody has a copy. Your Honor, I'm now
25 handing the witness EB Exhibit 1C to Mr. Smith.

1 DIRECT EXAMINATION

2 BY MR. ENGEL:

3 Q What is that document?

4 A That's my testimony.

5 Q Would you turn to the last page? Is that, in fact, your
6 signature?

7 A It is.

8 Q Your Honor, this document was previously admitted into
9 the record. You keep that in front of you, sir. Mr. Smith, you're
10 here to testify about your firsthand knowledge regarding Maritime,
11 is that correct?

12 A That's correct.

13 Q Now, in your testimony you say that you ceased working at
14 Maritime in December of 2012, is that correct?

15 A That's correct.

16 Q But you've remained involved, for point of clarification,
17 Your Honor, Mr. Smith, you remained involved with Maritime for an
18 additional approximately five months, is that correct?

19 A I became a Choctaw Telecommunications employee from
20 December through approximately May 2013, and we had a management
21 agreement.

22 MR. ENGEL: Your Honor, the witness is available for
23 cross-examination.

24 JUDGE SIPPEL: Okay, thank you, Mr. Engel. Let's see, is
25 this witness going to testify to any confidential matters that we

1 know?

2 MR. ENGEL: Your Honor, I don't believe so. We are not
3 introducing confidential matters. His testimony is not
4 confidential.

5 JUDGE SIPPEL: All right. Okay, and cross-examination,
6 Mr. Stenger?

7 CROSS-EXAMINATION

8 BY MR. STENGER:

9 Q Mr. Smith, who prepared your written testimony?

10 JUDGE SIPPEL: Well, maybe you should introduce yourself
11 to the witness, tell him who you are.

12 BY MR. STENGER:

13 Q I am James Stenger with Chadbourne and Parke. I
14 represent two of Mr. Havens' companies, Environmental and Verde.

15 A Sure.

16 JUDGE SIPPEL: You also, you also represent Mr. Havens.
17 That's what EVH stands for.

18 MR. STENGER: No, I don't represent Mr. Havens, but when
19 we filed pleadings jointly pursuant to Your Honor's orders, then we
20 characterize ourselves as EVH for joint filing.

21 JUDGE SIPPEL: Okay. I'll take that.

22 BY MR. STENGER:

23 Q My question was who prepared your testimony?

24 A I did.

25 Q And did you consult with the Bureau attorneys in

1 preparing a testimony?

2 A I did not.

3 Q And what documents did you use to prepare your testimony?

4 A I don't recall using any documents in particular, other
5 than licenses and site lists.

6 Q Licenses, what licenses?

7 A FCC licenses.

8 Q And which ones?

9 MR. ENGEL: Objection, vague.

10 JUDGE SIPPEL: Sustained.

11 BY MR. STENGER:

12 Q Which FCC licenses?

13 JUDGE SIPPEL: It's sustained.

14 BY MR. STENGER:

15 Q What was the other thing you said you used besides FCC
16 licenses?

17 A Just previous documents related to this case.

18 Q Can you be more specific?

19 MR. ENGEL: Objection, vague.

20 JUDGE SIPPEL: Let me just try something. Mr. Smith, why
21 exactly are your duties just the, I mean, Maritime?

22 THE WITNESS: Well, when I was involved with Maritime?

23 JUDGE SIPPEL: Yes, when he was your boss.

24 THE WITNESS: Yes, engineering. So site maintenance,
25 site construction, keeping the sites constructed and operated.

1 JUDGE SIPPEL: Did you inspect sites also?

2 THE WITNESS: I did, yes, on occasion.

3 JUDGE SIPPEL: What would cause you to inspect the sites?

4 THE WITNESS: Well, various reasons. I mean, as we had
5 systems operated there I would go out for maintenance purposes or
6 whatever. As those systems wound down I would go out, possibly
7 change out equipment in there, and once we entered into the leases
8 with third parties I would go out and make sure that the sites were
9 operational and inspect them and make sure everything was, you
10 know, meeting the requirements.

11 JUDGE SIPPEL: Now, would this be self-motivated tasks
12 that you would take on or would somebody be in the front office
13 directing you to go out on certain given days and do a certain
14 given job?

15 THE WITNESS: They were self-motivated. Obviously,
16 things were discussed. We were a company of two or three people.

17 JUDGE SIPPEL: In your experiences, how long have you
18 been an engineer in this capacity, I mean?

19 THE WITNESS: Approximately 25, 30 years.

20 JUDGE SIPPEL: And you worked for any other companies?

21 THE WITNESS: Well, I've worked for Waterway
22 Communications, which was eventually purchased by Mobex
23 Communications. I then worked for Mobex Communications up until
24 those assets were purchased by Maritime, and then I currently work
25 at NRTC.

1 JUDGE SIPPEL: NRTC is the rural --

2 THE WITNESS: National Rural Telecommunications
3 Cooperation.

4 JUDGE SIPPEL: Okay. All right, so you're not affiliated
5 with, or are you, with Mr. Kirk's company? Choctaw?

6 THE WITNESS: No, sir. Not at this time, no.

7 JUDGE SIPPEL: But you have been?

8 THE WITNESS: I was for a five month period.

9 JUDGE SIPPEL: Yes.

10 THE WITNESS: Yes, from January of 2013 up through about
11 May.

12 JUDGE SIPPEL: Of '13?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: Thank you. Okay, Mr. Stenger.

15 BY MR. STENGER:

16 Q Mr. Smith, if you could look at paragraph three of your
17 testimony where you're testifying about WHG750. And that, that
18 station, you say, was operated as part of the Watercom system by
19 Mobex? Is that correct?

20 A That's correct.

21 Q And that it was acquired by Maritime in 2005?

22 A Correct.

23 Q Okay. Then in the last sentence you say that the
24 Watercom Stations, are you referring to the WHG750 stations?

25 A Well, the WHG call signs.

1 Q Okay, they provided service to end user customers until
2 December 31, 2007, so they stopped providing service to end user
3 customers in the last day of 2007?

4 MR. ENGEL: Your Honor, this is not necessarily an
5 objection, but the use of it is a little bit confusing.

6 JUDGE SIPPEL: The testimony speaks for itself.

7 BY MR. STENGER:

8 Q Okay, who made the determination to stop providing
9 service to end user customers on December 1, 2007? Was that your
10 decision?

11 A It actually was, yes.

12 Q And why did you make that decision?

13 A Because, basically, we didn't have any customers left.

14 Q Okay. Now, if you turn to paragraph nine of your
15 testimony on page three you say that WHG750, that's the same
16 license you were talking about in paragraph three, right?

17 A Correct.

18 Q Okay, you say that that license has been under lease to
19 Duquesne Electric Company since 2010. Is that correct?

20 A That's correct.

21 Q Okay, can you be more specific about when in 2010 it was
22 released to Duquesne?

23 A No, I can't. I don't know, I guess we would have to look
24 at that lease to see the time frame on that.

25 Q Did you negotiate the lease with the attorney?

1 AI did not.

2 Q Who negotiated it?

3 A John Reardon.

4 Q Okay. Now, now this question, I kind of have to jump
5 back and forth between paragraph three and paragraph nine. At the
6 end of paragraph three you say that you stopped using that license
7 to provide service to customers on December 31, 2007, and then in
8 paragraph nine you say you leased it to Duquesne sometime in 2010
9 --

10 MR. ENGEL: Objection again, Your Honor, there's uses of
11 you, it, they, it's --

12 MR. STENGER: Can I finish asking the question without
13 interrupting?

14 JUDGE SIPPEL: I'm going to permit the question to be
15 asked in a way that you can.

16 MR. STENGER: Your Honor, it's very difficult for me to
17 have a train of thought when I'm constantly interrupted by the
18 Bureau in the middle of asking a question. May I instruct you,
19 sir, after I finish asking you a question pause, do not answer my
20 question immediately, pause and give Mr. Engel time to make an
21 objection. I promise you that I won't expect you to answer my
22 question immediately. I would like to finish my question before
23 Mr. Engel interrupts me.

24 JUDGE SIPPEL: All right, let's get a question out.

25 MR. STENGER: Well, I have to try to go back and figure

1 out where I was. And I think what I said, sir, is that this next
2 question is a little bit complicated.

3 BY MR. STENGER:

4 Q I need you to refer to paragraph three where you say that
5 you stopped using WHG750 to serve customers on December 31, 2007,
6 and then if you turn to paragraph nine, you say you leased that
7 license to Duquesne in 2010, so my question is between December 31,
8 2007 when you stopped serving customers and sometime in 2010 when
9 you leased it to Duquesne, what were you doing, or what was
10 Maritime doing with the station during that approximately three
11 year period?

12 MR. ENGEL: Objection, Your Honor.

13 MR. STENGER: Don't answer me.

14 MR. ENGEL: Objection, it mischaracterizes testimony,
15 used the word you five times in there. Nowhere in this testimony
16 do I see that Mr. Smith provided any service to anybody.

17 JUDGE SIPPEL: Well, at the end --

18 MR. ENGEL: Not to put the words in Mr. Stenger's mouth,
19 but he said "you" five times.

20 JUDGE SIPPEL: I can have him rephrase the question
21 properly, but do you understand the question, do you think you can
22 handle it?

23 THE WITNESS: I do.

24 JUDGE SIPPEL: Go ahead, Mr. Smith.

25 THE WITNESS: Okay, so in, at the end of 2007 we stopped

1 providing customers, so we were no longer billing customers for
2 service on that station or any of the, the Waterway Communication
3 stations, as far as that goes. The sites were still there, they
4 were still operational, and they just were not providing service.

5 BY MR. STENGER:

6 Q Now, if you look at paragraph four of your testimony,
7 you're talking there about KAV889 on the West Coast license, and at
8 the end of that paragraph you say that you stopped using that
9 license to provide service on December 31, 2012, is that correct?

10 A That's correct.

11 Q Okay. Let's see. That was 2012. Now, then if you turn
12 to paragraph 10 of your testimony, the end of your first sentence
13 there on paragraph 10, you say you've been leasing that Maritime,
14 when I say you, I mean, Maritime, at the time you were working
15 there. I apologize, it wasn't you, it was Maritime. Maritime has
16 been leasing that to Puget Sound Energy since March 2010. Do you
17 see that sentence?

18 A I do.

19 Q Okay, so, again, jumping back and forth between these two
20 paragraphs, paragraph four, Maritime was serving end user customers
21 until 2012, the end of 2012, but two years, or 18 months before
22 that, Maritime started leasing the spectrum to Puget Sound. Is
23 that a fair statement?

24 MR. KELLER: Your Honor, I just want to point out, I
25 don't know if it's an actual objection, but that the two paragraphs

1 are referring to two different facilities, so it's a
2 mischaracterization.

3 JUDGE SIPPEL: That's what I was afraid of.

4 THE WITNESS: Which is exactly what my answer would be.

5 JUDGE SIPPEL: All right. We'll just let Mr. Smith
6 handle that one. Let's try again.

7 MR. KELLER: Sorry for underestimating you.

8 THE WITNESS: I'm happy to answer it if you'd like.

9 MR. STENGER: Well, let me go back.

10 JUDGE SIPPEL: Give him a second.

11 BY MR. STENGER:

12 Q Let me go back and try to clarify then. Okay, so, the
13 second sentence of paragraph four says other than KAE889 location
14 14, the West Coast systems he's providing and service to end users
15 December 31, 2012, so are you saying that all of the other
16 locations on KAE889 stopped on December 31, 2012 except for
17 location 14? Location 14 stopped providing service in 2010, is
18 that correct?

19 JUDGE SIPPEL: Well, his testimony is in paragraph four.

20 MR. STENGER: I'm sorry; I'm referring to paragraph four.
21 I'm looking at paragraph four.

22 JUDGE SIPPEL: Well, it says that you're paraphrasing it
23 and then saying is that your testimony. His testimony is stated
24 specifically in paragraph four the way it says it.

25 MR. STENGER: Well, I'm not understanding what Mr. Kirk

1 was, what Mr. Keller was saying was wrong.

2 JUDGE SIPPEL: Is that what you're trying to understand?

3 MR. KELLER: Your Honor, I object, it's vague. I'm used
4 to getting concise, cutting cross-examination questions. These are
5 rambling questions with multiple paragraph citations. I just, what
6 is the question?

7 JUDGE SIPPEL: Welcome to the game.

8 MR. STENGER: It says the systems he's --

9 JUDGE SIPPEL: Do you want me to go off the record and
10 you can ask, you know, you can work this out with counsel?

11 MR. STENGER: No, I just want to ask my question. The
12 West Coast system, the locations on KAE889 continued providing
13 service until December 31, 2012 except for location 14, which ended
14 in 2010, is that correct?

15 JUDGE SIPPEL: You mean, you can't understand that?

16 MR. STENGER: It's unclear to me. I'm just asking him,
17 did they --

18 JUDGE SIPPEL: Well why, why would it be unclear to you?

19 MR. STENGER: Well, I find, Your Honor --

20 JUDGE SIPPEL: Read the sentence. Other than KAE, etc.,
21 location 14, we've ceased to find service in 2010 to avoid
22 interference, etc., with the rebuilding authority.

23 MR. STENGER: Okay, the --

24 JUDGE SIPPEL: The licensed system, West Coast system,
25 ceased providing service to end user customer as of July 31, 2012.

1 MR. STENGER: Okay, let's turn to paragraph 10 of your
2 testimony.

3 JUDGE SIPPEL: It's perfectly clear.

4 BY MR. STENGER:

5 Q All right, so the West Coast system was operating until
6 December 31, 2012, is that, am I correct?

7 MR. ENGEL: Asked and answered.

8 JUDGE SIPPEL: Yes, it's obvious.

9 BY MR. STENGER:

10 Q Okay, now, let's turn to paragraph 10. Paragraph 10 you
11 say you were leasing locations on KAE889 to Puget Sound since March
12 2010, is that correct?

13 JUDGE SIPPEL: Asked and answered.

14 BY MR. STENGER:

15 Q Okay, so was there a year and a half period of overlap
16 when Puget Sound was operating the locations that you list in
17 paragraph 10, and at the same time Maritime was providing service
18 to customers?

19 MR. ENGEL: Objection, vague, confusing, compound.

20 JUDGE SIPPEL: Sustained.

21 BY MR. STENGER:

22 Q Was there a period of time when Maritime was providing
23 service using KAE889 and Puget Sound Energy was also using the same
24 spectrum?

25 A I can tell you there was not a period of time at those

1 locations, those five locations that are involved in the Puget
2 Sound lease where they were leased and then we were providing
3 services at those five locations.

4 JUDGE SIPPEL: Next question. Sounds like the end of
5 that discussion.

6 BY MR. STENGER:

7 Q On paragraph eight you talk about WRV374.

8 A Yes.

9 Q Leased to Pinnacle Wireless. Did you negotiate that
10 contract with Pinnacle Wireless?

11 A I did not.

12 Q And who negotiated that?

13 MR. ENGEL: Objection, relevance. Who negotiated is not
14 relevant, Your Honor.

15 MR. STENGER: I want to get this witness's knowledge
16 about these contracts. The whole essence of this case --

17 JUDGE SIPPEL: Well, what are you doing that for?

18 MR. STENGER: To find out who negotiated the contracts to
19 the best of his knowledge.

20 JUDGE SIPPEL: He said he didn't.

21 MR. STENGER: Other people may tell that they negotiated
22 the contracts, so he didn't tell us that --

23 JUDGE SIPPEL: He's testifying as to himself, he's not
24 testifying --

25 MR. STENGER: I just want to know if he knows who

1 negotiated the contract.

2 JUDGE SIPPEL: I'm not going to admit the question. Move
3 on. That's a deposition question.

4 MR. STENGER: Well, Your Honor, I don't have any other
5 questions, in that case.

6 JUDGE SIPPEL: Okay.

7 MR. STENGER: Mr. Havens, I think, has a question.

8 JUDGE SIPPEL: How many, Mr. Havens?

9 MR. HAVENS: Well, that's my question. I'm here as a
10 party and I'd like to know to what degree you will let me function
11 as a party here. I wouldn't have come to Washington if I'm going
12 to be told I have a minute or two to talk to witnesses. I asked
13 you --

14 JUDGE SIPPEL: How many depositions did you take?

15 MR. HAVENS: Excuse me?

16 JUDGE SIPPEL: How many depositions did you take?

17 MR. HAVENS: I'm talking about right here at the trial.

18 JUDGE SIPPEL: Well you did the, you do the, before a
19 trial you're supposed to do specific things, not general things.

20 MR. HAVENS: Can you tell me for the rest of this hearing
21 what participation you will allow me? Otherwise, I have to go back
22 to California to do business if I can't participate here.

23 JUDGE SIPPEL: Well, you're asking for advisory opinion,
24 I don't give those.

25 MR. HAVENS: Okay, may I proceed?

1 JUDGE SIPPEL: You may proceed, but how many questions do
2 you have?

3 MR. HAVENS: I don't know.

4 JUDGE SIPPEL: So you're just shooting blind?

5 MR. HAVENS: No, I have questions, Your Honor. I have
6 them listed.

7 JUDGE SIPPEL: How many do you have?

8 MR. HAVENS: It depends on the answers.

9 JUDGE SIPPEL: Yes.

10 MR. HAVENS: Okay, I have four.

11 JUDGE SIPPEL: Thank you. We'll start with four and see
12 what kind of answers you get. Take the first one first.

13 CROSS-EXAMINATION

14 BY MR. HAVENS:

15 Q Can you please explain what FCC authority permission or
16 acceptance that Maritime obtained to lease spectrum to the lessees?

17 MR. ENGEL: Objection, lack of foundation, testified
18 already, Your Honor. He's an engineer and relevance.

19 MR. HAVENS: He may know. He may have an answer.

20 JUDGE SIPPEL: Sustained. Well, he's not necessarily.
21 He's out of his field of expertise.

22 MR. HAVENS: I don't know that.

23 JUDGE SIPPEL: Oh, I do.

24 MR. HAVENS: Well, I'm asking the witness.

25 JUDGE SIPPEL: Because he gave, he gave his entire

1 background. I asked him those questions.

2 MR. HAVENS: You want another answer? Is that the
3 correct?

4 JUDGE SIPPEL: If you get an answer you might not be the
5 best answer you can get --

6 MR. HAVENS: I'm just asking you should I move on or will
7 you let him answer?

8 JUDGE SIPPEL: I will allow him to answer the question.

9 MR. HAVENS: Thank you.

10 JUDGE SIPPEL: Do you know, Mr. Smith?

11 BY MR. HAVENS:

12 A Can you repeat the question? Can you read it back?

13 JUDGE SIPPEL: No, he can't read it back.

14 Q What authority or permission or acceptance does Maritime
15 Communications have from the FCC to provide use of leased spectrum
16 to any lessee?

17 MR. PLACHE: We object. It's outside the scope of the
18 issue.

19 JUDGE SIPPEL: I'll sustain that. So next question.

20 MR. HAVENS: The witnesses are talking about leased
21 spectrum that is how they --

22 JUDGE SIPPEL: Your next question.

23 BY MR. HAVENS:

24 Q Can you please explain how did it determine service
25 contours in which Maritime or any lessee of Maritime can lease and

1 operate fill in stations?

2 A Sure. We utilize software. I, in particular, utilize
3 radio soft com study, and we do a 38 DBU service contour and a 20
4 DBU interference contour. We use Longley-Rice.

5 MR. HAVENS: Your Honor, if I ask a follow up question is
6 that a new question out of my four or is that a seam?

7 JUDGE SIPPEL: Oh boy, that's a tough one.

8 MR. ENGEL: No objections.

9 JUDGE SIPPEL: I'll let you make the final one and you've
10 got two in reserve after the follow up.

11 BY MR. HAVENS:

12 Q What are the technical components that you use to do the
13 38DBU contour and what is the evidence of those components?

14 A When you say technical components I'm not sure what
15 you're discussing.

16 Q Okay, I'm familiar with and I understand you are
17 technically on how to calculate with a computer program, a 38DBU
18 contour.

19 A Yes.

20 Q And I've been doing this for years and I'm sure it sounds
21 like you have, and Mr. Reardon said you have. There are components
22 --

23 A Okay.

24 Q Transmitter power.

25 A Right. Sure.

1 MR. ENGEL: Is there a question, Your Honor?

2 JUDGE SIPPEL: Yes, get to the question.

3 MR. HAVENS: He asked me what components and I'm
4 explaining to him.

5 JUDGE SIPPEL: Yes, he is. That's true, that's true.

6 MR. HAVENS: Okay.

7 BY MR. HAVENS:

8 Q There's transmitter power, various components of the
9 antenna system, which all have losses, an antenna with a certain
10 amount of gain.

11 A Right.

12 Q ERP that comes out of the antenna as a result, and
13 directionality of the antenna.

14 MR. ENGEL: Objection, Your Honor, Mr. Havens is
15 testifying. I realize the witness --

16 MR. STENGER: I'm asking him if that's --

17 JUDGE SIPPEL: I'm very interested in what he's saying.

18 MR. ENGEL: I understand.

19 JUDGE SIPPEL: I'm very interested. Please don't
20 interrupt him.

21 MR. HAVENS: Thank you.

22 JUDGE SIPPEL: Keep going.

23 BY MR. HAVENS:

24 Q Okay, my characterization is my understanding of
25 components. Would you confirm or not that my characterization are

1 the components, or among the components which a technical person
2 with the proper software uses to, to determine the 38DBU contour?

3 JUDGE SIPPEL: I don't want any objections to this now.

4 BY MR. HAVENS:

5 A Absolutely, so we use, first of all, the AGL, the height
6 above ground of the antenna, we use the transmitter output power,
7 you take any system losses that are in there from the antenna
8 system, you know, via duplexers, whatever you may have in line
9 there, the connectors that are in line, the type of hard line that
10 you're using to feed the antenna, the gain of the antenna, and, and
11 you calculate the ERP of the site and if that then determines the
12 contour.

13 Q Right, and am I correct, those are not on the license per
14 se, those are the physical stations that are used, the components
15 of the physical station?

16 A Absolutely.

17 Q And --

18 A Some of those things are on the license though, by the
19 way. The AGL is listed on the license and the transmitter power is
20 listed.

21 Q But what I mean, the license does not require a party to
22 use the maximum height, am I not correct?

23 A That's correct.

24 Q Okay, so what I mean, or I should ask you, when you
25 calculate a contour are you using the maximum parameters on a

1 license, or the actual physical stations characteristics?

2 A The actual physical stations characteristics.

3 Q And are you aware that the, the commission suspended and
4 froze those components to determine a service contour and the
5 service contour in the year 2000?

6 MR. ENGEL: Objection.

7 MR. PLACHE: Objection.

8 JUDGE SIPPEL: Sustained. But the seminar is very
9 interesting.

10 BY MR. HAVENS:

11 Q How do you then determine whether the service contour
12 with the actual station components are within, or do you, are you
13 aware when you determine the service contour whether or not the
14 actual station's components are authorized by FCC orders? I tried,
15 I was about to cite an order, but it sounds like you don't want me
16 to do that. If you do I'll cite the order.

17 MR. ENGEL: Objection. We've already said this is an
18 engineer.

19 JUDGE SIPPEL: Sustained. That's outside the scope of
20 his testimony.

21 MR. HAVENS: You mean my question? I can try to rephrase
22 it or the question shouldn't be answered?

23 JUDGE SIPPEL: I don't think there's, I don't think we
24 can spend anymore time on that subject matter.

25 MR. HAVENS: I'm sorry, I didn't understand.

1 JUDGE SIPPEL: No, because he hasn't, he's not testifying
2 as to FCC rules applied to how he does things. He's testifying to
3 how he does things. So that's it, take it or leave it.

4 MR. HAVENS: I don't know.

5 JUDGE SIPPEL: Well, it's not going to be guesswork. I'm
6 not going to put a witness --

7 MR. HAVENS: I didn't know what you meant by take it or
8 leave it. You mean I should --

9 JUDGE SIPPEL: No, I mean, you take his answer the way he
10 gave it, which is flat out. This is the way I do it.

11 MR. HAVENS: Uh huh.

12 JUDGE SIPPEL: Or you don't take his answer.

13 MR. HAVENS: Oh, I had it, my question was not how he did
14 it. If I could --

15 JUDGE SIPPEL: Well, that's exactly what you were asking
16 him, how he did it.

17 MR. HAVENS: No, my follow up question was, Your Honor,
18 is he aware of how he does this technical contour determination
19 complies with FCC orders on the contour determination.

20 JUDGE SIPPEL: That's not his area of expertise.

21 MR. HAVENS: Okay, fine. All right, I'll move on.

22 JUDGE SIPPEL: Now you've got two questions left, and I'm
23 being generous because you've got a follow up. Actually, I gave
24 you two follow ups.

25 MR. HAVENS: Okay. The fill ins, are you aware I'm

1 worried about answering, asking the question, but I'm trying to ask
2 a foundation question for the substance of the question, okay?
3 Okay, I'll get to the bottom line question, but I'd rather first
4 ask the foundation question.

5 JUDGE SIPPEL: Ask the foundation question.

6 MR. HAVENS: Okay.

7 BY MR. HAVENS:

8 Q When you calculate, when you do the calculation of the
9 service contour, do you, are you aware of any FCC rules that guide
10 how that is to be done for the service contour, particularly for
11 what Maritime is asserting that within the service contours there
12 are permitted fill in stations?

13 MR. PLACHE: Objection.

14 MR. ENGEL: Objection, relevance.

15 JUDGE SIPPEL: That's, I'm going to let him say yes or no
16 to that question. I'm going to permit the answer.

17 BY MR. HAVENS:

18 A Yes.

19 Q Can you explain?

20 JUDGE SIPPEL: No, that's going beyond. He's aware of
21 what the FCC requirements are, period.

22 MR. HAVENS: Can he state the --

23 JUDGE SIPPEL: You're not going to get him on these
24 requirements. This is not a test. This is not a test. He's
25 testifying factually to what he did.

1 MR. HAVENS: I know.

2 JUDGE SIPPEL: That's it.

3 MR. HAVENS: He can't cite the roles?

4 JUDGE SIPPEL: No.

5 MR. HAVENS: You won't let him?

6 JUDGE SIPPEL: No.

7 MR. HAVENS: Okay.

8 JUDGE SIPPEL: No, because that's not an issue in the

9 case. It's not, this is not a quiz on the FCC regulations.

10 MR. HAVENS: I'm just following your instructions.

11 JUDGE SIPPEL: Well, you better.

12 MR. HAVENS: All right, then, I'll move on.

13 JUDGE SIPPEL: Go ahead.

14 BY MR. HAVENS:

15 Q How can a fill in station that fills in the contours of
16 a licensed station interfere with a licensed station? Doesn't that
17 defeat the purpose of the fill in station?

18 JUDGE SIPPEL: You've got two questions in one? You've
19 asked two questions and that's a compound question. Take them one
20 at a time.

21 BY MR. HAVENS:

22 Q Can you explain how a fill in station, fill in station
23 interferes with the license station it is meant to fill in?

24 MR. ENGEL: Objection to the extent it calls for legal
25 conclusion. No objection to the --

1 MR. HAVENS: Can you explain the technical aspect?

2 JUDGE SIPPEL: I understand the objection. It's too
3 complicated to handle. I'm going to put it in abeyance, but go
4 ahead and ask the question.

5 MR. HAVENS: I thought I did.

6 JUDGE SIPPEL: You did ask the question. You understand
7 this question?

8 THE WITNESS: Sure.

9 JUDGE SIPPEL: There you go.

10 BY MR. HAVENS:

11 A First of all, I would be a little bit more concerned
12 about the license station interfering with the fill in stations.
13 You know, typically, the license station is higher, covers more
14 territory. Fill in stations are typically lower height, lower in
15 antenna height, typically lower in power, and, obviously if they're
16 operating on the same or adjacent channels you could have co-
17 channel or adjacent channel interference issues.

18 Q Oh, I agree with you, but you just stated that if the
19 fill in station were operating on the same spectrum as the licensed
20 station, what is it that you believe technically requires Maritime
21 to use all of the same channels in AMTS, how many at the license
22 station and at the fill in station at the same time?

23 MR. ENGEL: Objection, too confusing. It's too
24 confusing. That's way too confusing.

25 JUDGE SIPPEL: I'm going to sustain the objection here.

1 You did fine. You took the first part of your complex question and
2 you handled it fine. Get to the second part.

3 MR. HAVENS: I'll try to rephrase that.

4 JUDGE SIPPEL: Thank you.

5 MR. HAVENS: Can I break it down? It's one question, can
6 I break it down to try to make it simple?

7 JUDGE SIPPEL: Okay, you can do that.

8 BY MR. HAVENS:

9 Q How many channels are there? How many 12.5 kilohertz
10 paired channels are there in the Maritime lock, AMPF lock?

11 A Forty.

12 Q I agree.

13 JUDGE SIPPEL: Did you hear the answer?

14 MR. HAVENS: I did, 40.

15 MR. ENGEL: Your Honor, there's twice now that the
16 statements have been that Mr. Havens agrees with what the witness
17 is saying. I don't think that that's necessary. I move to strike
18 that from the record.

19 MR. HAVENS: All right, then I'll --

20 JUDGE SIPPEL: No, I'm learning a lot here. Go ahead.

21 MR. HAVENS: Thank you.

22 JUDGE SIPPEL: Don't give him any wise looks.

23 MR. HAVENS: I was going to see if he had any more
24 objections.

25 JUDGE SIPPEL: Ask the witness the question.

1 MR. HAVENS: All right. I was just looking at him.

2 JUDGE SIPPEL: Okay, my fault.

3 MR. HAVENS: Thank you.

4 BY MR. HAVENS:

5 Q Why is it that there are 40 channels that Maritime cannot
6 use some of those channels at the license station and allow the
7 lessee to use other channels at the fill in channels to avoid the
8 interference?

9 A Well, it's certainly possible in certain circumstances.
10 You know, can I point out a specific example?

11 Q Well, just technically is that possible?

12 A It is technically possible, but that --

13 Q That's all I, that's all I have.

14 A They're not using it on --

15 JUDGE SIPPEL: Well, if you can give an example because
16 that helps me.

17 MR. HAVENS: Okay, sure.

18 BY MR. HAVENS:

19 A Okay, so if we take the New Jersey Turnpike system into
20 account, I don't know what the exact number of sites are, but they
21 have multiple sites with multiple channels operating at each of
22 those sites. They're a very tight reuse patter on that and
23 transmissions from a high site in close proximity to that can
24 certainly cause adjacent channel issues.

25 Q It could?

1 A Yes, sir.

2 Q All right, if Maritime chose to keep and use some of the
3 channels at the license station, do you agree it could avoid
4 interference?

5 JUDGE SIPPEL: That would be hypothetical. I'm not going
6 to permit that question, unless Mr. Smith would want to answer it.

7 MR. KELLER: I object.

8 JUDGE SIPPEL: He's going to object. His counsel
9 objects. So move on.

10 BY MR. HAVENS:

11 Q Okay, then is it your testimony, I think you --

12 JUDGE SIPPEL: We know what his testimony is.

13 MR. HAVENS: Excuse me?

14 JUDGE SIPPEL: I said we know what his testimony is.

15 MR. HAVENS: He used a hypothetical. He said he didn't
16 know what, if New Jersey Transit needed all of the channels.

17 JUDGE SIPPEL: I said it was hypothetical and I said I --

18 MR. HAVENS: I'm referring to his answer, not my
19 question.

20 JUDGE SIPPEL: No, I am the one that's repeating the
21 question and telling you that it's hypothetical. He's not going to
22 answer a hypothetical question.

23 BY MR. HAVENS:

24 Q Do you know whether or not a fill in station can be
25 operated lawfully if the license station is not on the air with

1 service?

2 MR. KELLER: Objection.

3 MR. ENGEL: Objection.

4 MR. KELLER: Calls for a legal conclusion.

5 JUDGE SIPPEL: Sustained. He's not a lawyer.

6 BY MR. HAVENS:

7 Q Do you authorize the use of any Maritime spectrum at
8 particular sites based on your technical capability and role?

9 MR. ENGEL: Objection, the witness has already testified
10 that he doesn't work at maritime.

11 MR. HAVENS: I meant in the time he was with Maritime.

12 JUDGE SIPPEL: I'm overruling the objection. Don't
13 interfere unless you really have to.

14 MR. ENGEL: Yes, Your Honor.

15 JUDGE SIPPEL: This is very interesting. Do you know the
16 question now?

17 MR. SMITH: I am not clear on it. Can you repeat that
18 please?

19 JUDGE SIPPEL: See what happens? That was a good
20 question.

21 BY MR. HAVENS:

22 A Can you repeat?

23 Q I can't remember what it was. Hold on, let me try that
24 again.

25 MR. STENGER: Who authorized the lessees to use fill in

1 sites, I believe, is what you asked.

2 BY MR. HAVENS:

3 Q I think what I asked is if not you, which I understand
4 it's not you, because you said Maritime is a very small company and
5 you used to work there, authorized use of some of the Maritime
6 channels on fill in stations and in cases where that caused, would
7 cause interference to the license station if it were on the air?

8 A So you're asking me if I would do the studies and I would
9 make that determination?

10 Q No, I think you said you, correct me if I'm wrong, you
11 said you wouldn't, that was not within your scope, is that correct?

12 JUDGE SIPPEL: I didn't hear him say that.

13 MR. HAVENS: Okay, well, then, if you --

14 JUDGE SIPPEL: Go ahead. Ask him the question straight
15 up. Do you understand his question?

16 THE WITNESS: Not completely, sir.

17 JUDGE SIPPEL: Okay, let's get it again, because it's a
18 darn good question.

19 MR. HAVENS: Could you ask it, Your Honor?

20 JUDGE SIPPEL: No. I'll let you go one more time and
21 I'll see if I can help.

22 MR. HAVENS: Okay.

23 BY MR. HAVENS:

24 Q Well, I'll break it down.

25 A Okay.

1 Q Did you, when you worked at Maritime or as a contractor
2 for Maritime, authorize lessees to use some of the Maritime
3 channels at, or all of them, at fill in stations and none of the
4 channels at the associated license station? Is that your
5 determination?

6 JUDGE SIPPEL: That's very unclear.

7 THE WITNESS: I think I understand what he's saying.

8 JUDGE SIPPEL: Okay, fine.

9 BY MR. HAVENS:

10 A That was not my determination. Obviously, if somebody is
11 leasing, it's their determination where they locate those sites of
12 the lessee. The lessee, it would be their determination where they
13 locate their sites. We would review that data and make sure that
14 it met FCC rules.

15 Q But don't you think Maritime gave the lessee full rights
16 to do what it wanted with all those spectrum?

17 JUDGE SIPPEL: Wait, no, objection. That's way beyond
18 the scope. Now, he --

19 MR. HAVENS: I think he --

20 JUDGE SIPPEL: Well, that's a legal nightmare.

21 MR. HAVENS: Okay.

22 JUDGE SIPPEL: And that's under the scope of authority.
23 There is already testimony in the record from Mr. Allen that, with
24 respect to the spectrum of the Garden State, if that's the right
25 word, that involved the Maritime, that was the Garden State

1 authorities that found out that there were gaps in the designated
2 sites. In other words, a series of designated sites that were
3 being used causing a problem on the turnpike because there were
4 gaps and they either insisted that Maritime move the station sites
5 to a fill in, or else they did it themselves, I'm not sure which.
6 And you're shaking your head.

7 MR. HAVENS: I'm shaking my head because I know AMTS and
8 the rules. You can't move a licensed station --

9 MR. KELLER: Now you're testifying.

10 JUDGE SIPPEL: That's not my testimony.

11 MR. HAVENS: Excuse me?

12 JUDGE SIPPEL: I didn't say they moved it. I simply said
13 they used a fill in. I think I said they used a fill in. I wasn't
14 trying to get to the mechanics of how they do it, it's just that
15 you start off with the designated site; they ended up with some
16 fill in sites because of the gap so they could fill in the gaps.
17 That's all I know. Does that make sense to you?

18 MR. HAVENS: No.

19 JUDGE SIPPEL: It doesn't?

20 MR. HAVENS: No, I'm not permitted to talk about my
21 knowledge and views of the law or whatever so I won't.

22 JUDGE SIPPEL: I love your knowledge; look, we don't have
23 any objections to your knowledge.

24 MR. KELLER: Your Honor?

25 MR. HAVENS: Well, I'm just --

1 JUDGE SIPPEL: So I'm --

2 MR. HAVENS: I'm trying to present here what I'm
3 permitted.

4 JUDGE SIPPEL: And obviously I'm wasting your time too.
5 Yes, Mr. Keller?

6 MR. KELLER: I think this would be a good point to just
7 put sort a general objection to this kind of questioning as well as
8 some of the things that Mr. Stenger did. A lot of these questions
9 are more of a nature of trying to debate or argue with the witness
10 about whether the testimony conflicts with the law or what the law
11 is. Almost kinds of questions you would ask of a lawyer in an
12 appeal are argument.

13 JUDGE SIPPEL: Well, I ruled out the law.

14 MR. KELLER: Well, I understand that, but they're still
15 doing a lot of questions about well, don't you think this complies
16 with. It seems to me the witness can testify to the facts. Mr.
17 Havens will have ample opportunity to argue the law when it comes
18 time for proposed conclusion.

19 JUDGE SIPPEL: Absolutely right. Correct. Correct. And
20 if I gave anyone the impression, I stand corrected on that. I'm
21 simply trying to understand the mechanics of -- I'm very uneducated
22 and these two gentlemen are educating me. Mr. Havens, I'm going to
23 give you one more crack at this. If you want to consult with
24 counsel, that's okay.

25 MR. HAVENS: Give me, may we have one minute in the

1 hallway?

2 JUDGE SIPPEL: Sure.

3 MR. HAVENS: Okay.

4 JUDGE SIPPEL: One minute.

5 (Whereupon, the above-entitled matter went off the record
6 at 2:27 p.m. and resumed at 2:28 p.m.)

7 JUDGE SIPPEL: Mr. Havens, are you going to ask him to
8 interpret at rule?

9 MR. HAVENS: No, I would like to read part of the rule
10 and ask him a technical question.

11 JUDGE SIPPEL: We'll see how it goes.

12 MR. HAVENS: Okay.

13 JUDGE SIPPEL: This is a whole new question.

14 MR. STENGER: Make sure you identify the rule.

15 JUDGE SIPPEL: Are you satisfied with the other question
16 that we were wrestling with?

17 MR. HAVENS: I don't think so.

18 JUDGE SIPPEL: Wait a minute, you're not satisfied with
19 it? I tried to help out and ask the question, and you and I have
20 got into this dissertation about the fill ins between the two of us
21 and you are not satisfied?

22 MR. HAVENS: No, I'm not. I'm not.

23 JUDGE SIPPEL: All right.

24 MR. HAVENS: And either I'll continue in that line of
25 question or I'll move to --

1 JUDGE SIPPEL: What would you prefer to do?

2 MR. HAVENS: I'd like to ask a lot of questions, a lot of
3 witnesses, and I have quite a few more, but it's totally, obviously
4 up to you.

5 JUDGE SIPPEL: Let's try and finish this up. Ask this
6 question that you're saying you can do now.

7 BY MR. HAVENS:

8 Q Okay, I'm going to read part of the rule and ask you a
9 question on this. And the rule is technical. It's Section
10 80.4758, and I'm trying to see if I can jump to, it's a long
11 sentence.

12 JUDGE SIPPEL: Where is the section? Eighty?

13 MR. HAVENS: 80.4758.

14 JUDGE SIPPEL: 80.4758.

15 MR. HAVENS: Section 1, A1.

16 JUDGE SIPPEL: All right.

17 MR. HAVENS: It's the fill in station.

18 JUDGE SIPPEL: I'm putting that in front of you. Okay.
19 Now, I've got this in front of you, my copy of the CFRs. This
20 section right here, this sub-section, and this sub-section. Do you
21 have any familiarity with that at all?

22 MR. SMITH: May I see that?

23 JUDGE SIPPEL: Go ahead, yes.

24 MR. SMITH: I do.

25 JUDGE SIPPEL: Beg pardon?

1 MR. SMITH: Yes, I do.

2 JUDGE SIPPEL: Okay. Let's see what happens.

3 BY MR. HAVENS:

4 Q Okay, was your answer you are familiar with the rule or
5 that you're looking at it now, or both?

6 A I'm looking at it now; I'm familiar that it exists, yes.

7 Q Okay. Are you familiar that this is the fill in station
8 rule?

9 A Yes.

10 Q So the question I have here, if you'll jump to the part
11 of the rule that's relevant to my question, near the end of sub-
12 section one, it says unless the proposed stations predicted
13 interference contoured is fully encompassed by the composite
14 interference contour of the applicant's existing system or the
15 proposed station's predicted interference contour, then it goes on
16 a little bit, the rule talks about an existing system. What is
17 that existing system, and if it is not on the air how can you have
18 a fill in station at all?

19 MR. ENGEL: Objection, argumentative.

20 JUDGE SIPPEL: Sustained.

21 BY MR. HAVENS:

22 Q When you do your technical determinations of a permitted
23 fill in station and you calculate the contours, do you consider the
24 existing system, existing license station system?

25 A Yes.

1 JUDGE SIPPEL: What part of the sub-section are you
2 referring to that says that?

3 MR. HAVENS: It's near the end of sub-paragraph A1.

4 JUDGE SIPPEL: Okay, thank you. Do you see it?

5 MR. SMITH: Yes.

6 BY MR. HAVENS:

7 Q Technically, what does existing system mean?

8 MR. ENGEL: Objection, calls for legal conclusion.

9 MR. HAVENS: To do a technical analysis under the rule,
10 you have to know what existing system.

11 MR. ENGEL: It's the statement under the rule.

12 MR. HAVENS: I'm asking this witness do you know what
13 existing system means technically.

14 JUDGE SIPPEL: All right, hold it right there. Can you
15 answer that question?

16 MR. SMITH: Yes, sir.

17 JUDGE SIPPEL: Do you understand it?

18 MR. SMITH: Yes, sir.

19 JUDGE SIPPEL: Go ahead.

20 BY MR. HAVENS:

21 A It would mean the license locations within that area.

22 Q And your view, technically, it doesn't mean the existing.
23 Existing doesn't mean the physical operating station? It means --

24 MR. KELLER: Argumentative.

25 MR. HAVENS: Is there a license?

1 JUDGE SIPPEL: Are you arguing with the witness? He's
2 answered the question. Do you have another question?

3 MR. HAVENS: Yes.

4 BY MR. HAVENS:

5 Q By licensed station or license system to you mean it's
6 operating or not? What do you mean by that?

7 JUDGE SIPPEL: You're asking two questions there.

8 BY MR. HAVENS:

9 Q Okay, what do you mean by existing? What do you mean by
10 in this rule existing system?

11 MR. KELLER: Objection, asked and answered.

12 JUDGE SIPPEL: That has been asked and answered. The
13 rule speaks for itself.

14 MR. KELLER: I'd also note this isn't appropriate. The
15 record is clear about what's operating and what's not operating.
16 How that fits into there isn't something to be argued in the
17 briefing at the end of the case.

18 JUDGE SIPPEL: I, please bear with me. I understand
19 that. I have reasons why I want this --

20 MR. HAVENS: Can I follow up?

21 JUDGE SIPPEL: -- edification. What do you want to do
22 now? I gave you so many questions.

23 MR. HAVENS: Okay, then I have one more, okay?

24 JUDGE SIPPEL: Just try it.

25 MR. HAVENS: Okay.

1 JUDGE SIPPEL: One more then that's it.

2 BY MR. HAVENS:

3 Q My understanding is you testified that the existing
4 system means what is on the license, but you also testified that
5 what is on the license is not the components to be used in the fill
6 in station contour, it is the actual station.

7 A Well, I didn't testify --

8 MR. KIRK: Objection, Your Honor, misrepresents the prior
9 testimony.

10 JUDGE SIPPEL: He didn't testify to that. But that's
11 good, you're proposing on a fact situation which may or may not be
12 true, and the witness may or may not know that. You can ask him
13 that. Is that true the way he's presenting it to you?

14 MR. SMITH: Well, I can say that I did not testify that
15 the existing system was what was on the license. I testified that
16 the existing system was what was constructed and the operating
17 sites there. I guess I would, yes, that's it.

18 JUDGE SIPPEL: All right, that's it. That's it. Thank
19 you, very much, Mr. Havens.

20 MR. HAVENS: Thank you.

21 JUDGE SIPPEL: Anybody else have a question of Mr. Smith?

22 MR. PLACHE: I have a few questions.

23 JUDGE SIPPEL: Counsel, you're counsel for?

24 MR. PLACHE: Counsel for Pinnacle.

25 JUDGE SIPPEL: Pinnacle?

1 MR. PLACHE: Yes. And just a few questions about the
2 Pinnacle system and WRV374.

3 CROSS-EXAMINATION

4 BY MR. PLACHE:

5 Q You're familiar with the lease between Pinnacle and
6 Maritime, correct?

7 A Yes.

8 Q And you're familiar with the makeup of the system that
9 Pinnacle has constructed and is operating under that lease?

10 A Yes.

11 Q And you're familiar that they're operating from 19
12 separate fill in locations rather than from the actual licensed
13 locations?

14 A I am.

15 Q Did you ever have discussions with the folks at Pinnacle
16 about this and about why they were doing that?

17 A Yes, sir.

18 Q All right, did you also discuss what could happen in any
19 event the licensed locations were put back on the air?

20 A Yes.

21 Q And what was the conclusion?

22 A That there would be potential interference, and I may
23 also point out that when they first started doing this, the
24 licensed sites were on the air and were transmitting at the time,
25 but multiple channels at each site, or most of the licensed sites

1 that were involved in that. And we actually performed studies to
2 see the effect on licensed sites during that time.

3 Q And what was the effect?

4 A That there was certainly potential co-channel and
5 adjacent channel interference issues.

6 Q And if this would have had an adverse effect on the
7 operations, the turnpike, the Garden State Parkway, the
8 Meadowlands?

9 A Yes.

10 Q Okay, that's all. Thank you.

11 JUDGE SIPPEL: Any other questions? All right.

12 MR. KELLER: I do, Your Honor.

13 JUDGE SIPPEL: All right. Redirect?

14 MR. KELLER: I do. One question and then something about
15 what I'll discuss with his employee. First of all, let me find his
16 testimony here.

17 REDIRECT EXAMINATION

18 BY MR. KELLER:

19 Q Mr. Smith, I'm going to try to clarify some of the
20 confusion we were having comparing paragraphs four with the later
21 paragraphs, so could you turn to page two of your testimony and,
22 well, first, let me just ask you generally. Other than the
23 Santiago Peak system, when did Maritime stop providing end user
24 service to customers on the west coast systems?

25 A I honestly don't recall the exact dates, but I think

1 around the end of 2012.

2 Q I said other than that.

3 A Oh, other than that, I, it was earlier than that. I
4 don't know what the date was.

5 Q Well, I'm just going to ask you the question straight up.
6 Look at paragraph four, especially the last sentence where it talks
7 about other than Santiago Peak, which ceased service in 2010 to
8 avoid interference operations. The west coast system ceased
9 providing service to engineers or customers as of December 23,
10 2012.

11 A Right.

12 Q Is that possibly an error?

13 A I think that's possibly an error, yes.

14 Q I don't want to lead you, but what might, what probably
15 should have been there?

16 A Probably 2010 should have been there would be my guess.

17 Q Well --

18 A And here's why I say that is Santiago Peak was actually
19 the last west coast system that was providing service to customers,
20 and when Metrolink was doing their testing and we had to
21 discontinue service there because we were causing interference to
22 Metrolink, that's when customers ceased to be serviced there.

23 Q Well let me say one more thing. You were not providing
24 any service to end user customers on that system later than 2012,
25 is that correct?

1 A That's correct.

2 Q I mean, Santiago Peak was the last service. That's all.
3 Thank you.

4 MR. STENGER: I'm confused. I thought I was not allowed
5 to ask questions because this testimony spoke for itself and now
6 Mr. Keller is saying that it's wrong, that it's a different date.

7 JUDGE SIPPEL: You're being treated unfairly?

8 MR. STENGER: I don't understand what --

9 JUDGE SIPPEL: What's the point of you saying it that
10 way?

11 MR. STENGER: Pardon me, Your Honor, but I was not
12 allowed to ask questions about this paragraph on the grounds that
13 it spoke for itself. I don't understand what just took place. Is
14 Mr. Keller saying that this testimony is wrong?

15 JUDGE SIPPEL: Wait a minute, what are you get, what are
16 you asking a question that way for? Mr. Keller is redirecting his
17 witness. Mr. Keller is trying to point out an error in the
18 testimony.

19 MR. STENGER: And what was the error? I'm sorry, I
20 didn't catch it.

21 JUDGE SIPPEL: You didn't catch it?

22 MR. STENGER: No, sorry, I didn't.

23 JUDGE SIPPEL: Well, for goodness sakes man.

24 MR. KELLER: I'll state for the record, Your Honor, I
25 have reason to believe that that 2012 number in the testimony there

1 is a clerical error. I was just trying to elicit what the witness
2 may know about that, and I can point to other things in the record
3 to clarify this later.

4 JUDGE SIPPEL: This is to our benefit.

5 MR. STENGER: I'm sorry, what is the correct date that
6 should be there?

7 MR. KELLER: Well, I can't testify. I believe it's 2007,
8 but I, but I don't know that.

9 MR. STENGER: I'm sorry, 2007?

10 MR. KELLER: 2007. I believe in numerous interrogatory
11 responses we've tested, Maritime had answered that it no longer
12 provided end users, customer end user services from 2007. But
13 whatever it is I know it's --

14 JUDGE SIPPEL: On the West Coast system?

15 MR. KELLER: I know it was earlier than 2012 because that
16 system had stayed on the air, the San Diego was on the air. The
17 San Diego communications on the air. As far as the exact date the
18 witness didn't remember, so I don't want him to go from micro
19 memory; when it comes time for proposed facts, I will point out
20 specific interrogatory things that are on the record.

21 MR. STENGER: Is this the date, the last date at the end
22 of paragraph four?

23 MR. KELLER: The last number. I am suggesting that I
24 believe the correct answer.

25 JUDGE SIPPEL: He's only suggesting.

1 MR. KELLER: 2007 the witness says he thinks it might be
2 2010.

3 MR. STENGER: December 31, 2007 or just 2007?

4 MR. KELLER: December 31, 2007, I believe, is what was
5 stated in earlier testimony, I mean, earlier discovery.

6 MR. ENGEL: Your Honor, what is your preference if that
7 number needs to be corrected how to do so in the record?

8 JUDGE SIPPEL: I, I guess be done by a motion, with a
9 very brief motion so that I have a, there's a clear record of it.

10 MR. STENGER: Well, Your Honor, I'm prepared --

11 JUDGE SIPPEL: If there's testimony, unless, unless
12 counsel can, and parties can stipulate to it, and then, of course
13 that's the easiest way to do it. What are you looking at?

14 MR. STENGER: I prepared my cross-examination and I asked
15 him questions based on what his written testimony was. Am I going
16 to be allowed to ask a question now that he's changed the date?

17 JUDGE SIPPEL: Oh, no.

18 MR. STENGER: I mean, but here's my question. I'll tell
19 it to you. Now he's saying that he stopped providing service on
20 December 31, 2007.

21 JUDGE SIPPEL: He didn't say that.

22 MR. STENGER: At the end of that paragraph. But Mr.
23 Keller is.

24 JUDGE SIPPEL: Well, that's Mr. Keller.

25 MR. KELLER: And I said I wasn't testifying, I said --

1 MR. STENGER: Okay.

2 JUDGE SIPPEL: He said he's not testifying.

3 MR. STENGER: Okay, and then --

4 JUDGE SIPPEL: He's trying to do you a favor. He's
5 trying to do you a favor.

6 MR. STENGER: No, he's not doing me a favor, Your Honor,
7 because he --

8 JUDGE SIPPEL: You'd rather go out of here ignorant --
9 you'd rather go out of here ignorant of the fact that --

10 MR. STENGER: No, he's telling me this fact after I've
11 already cross-examined the witness, that the paragraph 10 it says
12 that they leased locations to Puget Sound Energy in March 2010, so
13 I thought the testimony was that the lease began in 2010, but they
14 kept providing service on their own sites for two more years until
15 2012. Now he's telling me that they turned off their service in
16 2007 and entered into a lease in 2010, so nothing was happening
17 with the spectrum for three years. That's now the testimony.
18 That's new. That's not the testimony I had. The testimony I had
19 is that they were operating and Puget was operating, overlapping
20 operations for two years. Now he's totally changing it and saying
21 they turned it off in 2007 and Puget didn't turn it on again until
22 2010, three years of nothing. That's totally different than what
23 I was prepared to cross-examine the witness on, and this is an
24 error that's just come to light right now?

25 JUDGE SIPPEL: When would you like it to come to light?

1 MR. STENGER: Well, I wasn't allowed to put in my --

2 JUDGE SIPPEL: Are you suggesting that you're being
3 treated unfairly?

4 MR. STENGER: Yes, because I wasn't allowed to put in my
5 copy of a document from the ULS showing that the New Jersey Sports
6 Authority has their own 220 megahertz license because I was late in
7 bringing seven copies to the courtroom, but he's allowed to change
8 his client's testimony after I've prepared cross-examination and
9 after I've cross-examined him.

10 JUDGE SIPPEL: He has.

11 MR. STENGER: Why didn't he raise this and say, Your
12 Honor, before Mr. Stenger cross-examines this witness, just so Mr.
13 Stenger doesn't waste time, I would like to correct the testimony?
14 Why didn't he do that at the beginning of the hearing this morning?

15 JUDGE SIPPEL: Well, that a very interesting question.

16 MR. KELLER: Can I briefly answer that, Your Honor?

17 JUDGE SIPPEL: Yes, I was going to say, first of all,
18 remember that there's no testimony in here that's contradicting
19 this 2012 date. There's no testimony.

20 MR. KELLER: First of all, the reason that I didn't bring
21 it up before was I didn't notice it until the cross-examination
22 focused my attention on it. You know, when you read through these
23 documents and everything, you see things and sometimes you just
24 don't catch a date that you're expecting to see. It caught my
25 attention because we went through so much, many rounds of discovery

1 in this case, I know the dates that we talked about. I'm not
2 changing the testimony, I tried to elicit the date that I believe
3 should be from the witness, but he didn't remember, so fine, I'm
4 stuck with that, and as I said, we'll argue it or present it.

5 MR. STENGER: I don't want to argue it, Your Honor, I
6 want to ask a simple factual question. The testimony has been
7 changed. Now the testimony is that he stopped using the stations
8 in 2007, he didn't use, and he didn't lease the stations to Puget
9 Sound Energy until 2010, three years later, now he's been, Mr.
10 Havens just spent a half an hour of, of contentious objections and
11 questions to try to find out about the interference between Puget
12 Sound's use and Maritime's use, and now I'm told by Mr. Keller that
13 for three years there was no interference because Puget Sound
14 Energy was not operating. Let me ask the witness. Was it --

15 MR. KELLER: Your Honor --

16 JUDGE SIPPEL: Wait. You're way ahead of us. Mr. Kirk?

17 MR. KIRK: Your Honor, he's misrepresenting the
18 testimony. During cross, the witness specifically said the
19 stations, in paragraph four, were never operating at the same time
20 as the stations in question ten.

21 JUDGE SIPPEL: That's true, he did.

22 MR. KIRK: And now he's saying that he was
23 misrepresenting that they were operating at the same time. He
24 never said that in his testimony.

25 MR. STENGER: And the reason why you had to turn off the

1 stations was because they would have interfered with Puget Sound.
 2 But you stopped operating those stations four years before Puget
 3 Sound went on the air. What's the excuse for the three years of
 4 non-operations?

5 MR. ENGEL: Your Honor, may I be heard?

6 JUDGE SIPPEL: Yes, you may.

7 MR. ENGEL: Counsel is apparently upset that there's a
 8 typo in the record that Mr. Keller wanted to correct. We've had to
 9 deal with over 370 exhibits, over 10,000 pages of exhibits they
 10 filed that, Your Honor had to go through, numerous findings, at
 11 least half a dozen, I believe, on the record, the last two months
 12 of frivolous pleadings. There was a pleading submitted this
 13 morning that we can get to it later, Your Honor, but if there's a
 14 typo that's existed in the record on one number and a party missed
 15 it, it's a little bit manufactured for EBH to be upset at this
 16 point, Your Honor. Everybody else in the room has been
 17 inconvenienced, if not them, Your Honor.

18 MR. HAVENS: I'm H in the EBH and --

19 JUDGE SIPPEL: Well, wait a minute, none of this Jack in
 20 the Box stuff. We're talking to Mr. Kirk and Mr. Stenger.

21 MR. HAVENS: Oh, I can't talk but he can? Okay.

22 JUDGE SIPPEL: Well, you understand he's across the table
 23 from you. You guys are sitting together.

24 MR. HAVENS: I'm different. I'm sorry, I'm different.

25 JUDGE SIPPEL: Well, you're not counsel for the Bureau.

1 MR. HAVENS: I'm counsel to myself.

2 JUDGE SIPPEL: Exactly.

3 MR. HAVENS: And I'm a party here.

4 JUDGE SIPPEL: Well, I said no doubling teaming, I said
5 no, you should be asking permission if you can address this thing,
6 because counsel --

7 MR. HAVENS: Okay, may I have --

8 JUDGE SIPPEL: Counsel has had the floor.

9 MR. HAVENS: May I address it?

10 JUDGE SIPPEL: The counsel has had the floor.

11 MR. HAVENS: May I address Mr. Engel?

12 JUDGE SIPPEL: No, you can address me or you can address
13 the witness.

14 MR. HAVENS: Okay, I would like to try to clarify for
15 everyone, Mr. Keller has pointed out what Mr. Engel calls a typo.
16 I don't think that's what Mr. Keller called it, but --

17 JUDGE SIPPEL: He didn't testify now.

18 MR. HAVENS: Okay.

19 JUDGE SIPPEL: He did not testify.

20 MR. HAVENS: Are you changing your testimony on that
21 date?

22 JUDGE SIPPEL: No, you're not going to ask the witness
23 that question. No, no.

24 MR. HAVENS: Okay, then what am I supposed to be doing
25 here?

1 JUDGE SIPPEL: Well, I don't know, you said you wanted to
2 stand --

3 MR. HAVENS: Well, you said I could address you or the
4 witness.

5 JUDGE SIPPEL: Yes, but I didn't know what was on your
6 mind.

7 MR. HAVENS: I'm trying to get the witness to state
8 whether or not Mr. Keller's pointing out an apparent error is, does
9 the witness have any knowledge of the error?

10 JUDGE SIPPEL: All right, look, that's unfair to the
11 witness.

12 MR. HAVENS: Excuse me?

13 JUDGE SIPPEL: It's unfair to the witness. The witness
14 has completed his testimony. Mr. Keller pointed out there was an
15 error in the date, and I said that you could work that out among
16 counsel, or else somebody's going to have to give me a new request
17 for you to issue an order correcting that date. That's what we've
18 got.

19 MS. KANE: Your Honor, I think I may be able to resolve
20 some of this issue.

21 JUDGE SIPPEL: You want to do it off the record or on the
22 record?

23 MS. KANE: I believe it can be done on the record, Your
24 Honor.

25 JUDGE SIPPEL: Okay, go ahead.

1 MS. KANE: I've been trying, while this conversation has
2 been going on, to figure out if, in fact, the date was correct, and
3 if, in fact, there was any typographical error. The Bureau's
4 Exhibit EB Exhibit Number 96 is Maritime's response to
5 interrogatories that were served by the bureau. They were served
6 and responded to in August of 2012. They were provided to Mr.
7 Havens and mister, oh, wait. This can't be the right one. Let's
8 see. I'm sorry, 2014, it looks like, although it's got a --

9 MR. KELLER: Did you say 96?

10 MS. KANE: Exhibit 96. It has a certificate of service
11 from 2012, but I believe that's a typo.

12 MR. HAVENS: Another typo.

13 MS. KANE: I think it's actually 2014.

14 MR. KELLER: 2014. Completing was dated August 4, 2014,
15 and so was the declaration.

16 MS. KANE: With regard to --

17 MR. KELLER: Or 2012, I'm sorry, 2012.

18 MS. KANE: If we turn to what has been internally marked
19 for that document, to page four, there is a specific answer in
20 response to a bureau's interrogatory in which it identifies the
21 date on which service to end user customers ceased for the West
22 Coast system. With your indulgence, Your Honor, I'm happy to read
23 that answer into the record.

24 JUDGE SIPPEL: Please read that into the record.

25 MS. KANE: It says locations eight, 14, 26 through 28,

1 33, 37, 39, and 44 of station KAE889 were operated in MPT 1327
 2 format as part of the West Coast regional system. Except for
 3 location 14 of station KAE889, the West Coast system had ceased
 4 providing service to end user customers as of December 31, 2012.
 5 So for point of clarification, locations eight, 14, 26 through 28,
 6 33, 37, 39, and 44 are not any of the licensed stations at issue in
 7 this hearing.

8 JUDGE SIPPEL: Mr. Havens?

9 MR. HAVENS: Yes, I have --

10 JUDGE SIPPEL: Are you responding to this point?

11 MR. HAVENS: I'm directly responding in the question is,
 12 Your Honor --

13 JUDGE SIPPEL: Hang on, yes, go ahead.

14 MR. HAVENS: If a witness's written statement or oral
 15 testimony conflicts with interrogatory responses and other
 16 materials in the record, does that mean that the written statement
 17 and the oral testimony must conform to the interrogatory responses,
 18 or otherwise, what is the point of Ms. Kane?

19 JUDGE SIPPEL: Oh, I'm not giving anymore legal advice
 20 out here.

21 MR. HAVENS: Well, what is the relevance of her saying
 22 those interrogatory responses with different dates and information
 23 aren't --

24 MS. KANE: Actually, Your Honor, I believe what I
 25 testified was that it was exactly the same information. I said the

1 west coast, this response from Maritime, which was served on Mr.
 2 Stenger and Mr. Havens, if I read the service correctly, provides
 3 the exact same information. As was in Mr. Smith's written direct
 4 testimony, which is at the West Coast system, other than for
 5 location number 14, ceased providing service to end user customers
 6 as of December 31, 2012.

7 MR. STENGER: Yes, but we did, then Mr. Keller said --

8 MS. KANE: What we've got is exactly the same answer.

9 MR. STENGER: That's wrong. It's December 31, 2012.

10 MS. KANE: Mr. Keller is not testifying. These are
 11 documents that have been admitted into evidence.

12 JUDGE SIPPEL: Yes, yes, you're getting too hot under the
 13 collar. You've got to cool off.

14 MR. STENGER: Well, what's her point, that there's a
 15 wrong date twice? Is that the point? I don't get what the point
 16 is.

17 JUDGE SIPPEL: The point is that you all are going to
 18 figure out what the correct date is amongst yourselves.

19 MR. STENGER: Mr. Keller says that the correct date is
 20 2007.

21 JUDGE SIPPEL: No. This is not a gotcha game. Cool off.

22 MR. KELLER: Your Honor, I thought there was an error, I
 23 still think there may be an error, I did not say that it is for the
 24 purpose of the record. I did what I thought was appropriate, which
 25 was try and question the witness to see if he knew. He didn't, and

1 so I said all right, I'm stuck with that, I'll deal with it later
2 by referring to the record, if necessary. I mean, if they're all
3 caught up on me, I think Mr. Kirk is right. I think the witness
4 testified that these systems weren't on the air at the same time.
5 All right, that's fine.

6 JUDGE SIPPEL: The witness's testimony is going to speak
7 for itself. This witness has been sitting here with nothing to do
8 for at least 30 minutes. I'm going to excuse the witness. Mr.
9 Smith, you may go on with your business. Thank you very much, sir.
10 He's gone. He's gone. You used all your time up. It's not fair
11 to him.

12 MS. KANE: Oh, we understand, Your Honor.

13 JUDGE SIPPEL: That's it. It's five to three now. We
14 have another witness.

15 MS. KANE: We do, Your Honor.

16 JUDGE SIPPEL: Do you think you can finish him this
17 afternoon?

18 MS. KANE: We would --

19 MR. ENGEL: I'll be done with him in 30 seconds, Your
20 Honor.

21 MS. KANE: Yes. That won't be an issue on our end, Your
22 Honor.

23 JUDGE SIPPEL: We anticipate --

24 MR. STENGER: Your Honor, I'd like to adjourn for today
25 and pick up this next witness. They've switched the order of the

1 witnesses. I need to confer with my client. We would have to take
2 a break anyway. I would prefer to pick it up tomorrow morning.

3 JUDGE SIPPEL: Well, we're not going to do that.

4 MS. KANE: Your Honor, we've got the witness right next
5 door. I mean --

6 JUDGE SIPPEL: I know, I know.

7 MS. KANE: These kinds of scheduling changes are just
8 part of the litigation process.

9 JUDGE SIPPEL: Forget about that. Forget about that.
10 Forget about that. Please, Mr. Smith, don't feel like that. Do
11 you want to talk to him?

12 MR. KELLER: No, we, Mr. Smith is going to be here a
13 little while anyway, and I'd like, with Mr. Reardon, I may recall
14 him later as a rebuttal witness.

15 JUDGE SIPPEL: All right, let's go off the record. Let's
16 go off the record.

17 MR. ENGEL: If I may, Your Honor, I'm going to check on
18 the other witness.

19 (Whereupon, the above-entitled matter went off the record
20 at 2:55 p.m. and resumed at 3:17 p.m.)

21 JUDGE SIPPEL: Everybody is accounted for?

22 MS. KANE: I think so, Your Honor.

23 MR. ENGEL: I believe so, Your Honor.

24 MS. KANE: Everybody who's going to be here is here.

25 JUDGE SIPPEL: All right. Let's have your next witness.

1 MR. ENGEL: Your Honor, the bureau calls Patrick
2 Trammell.

3 JUDGE SIPPEL: Mr. Trammell.

4 MR. STENGER: Your Honor, Mr. Havens is here and Mr.
5 Havens requested --

6 JUDGE SIPPEL: Yes, we'll get into that, but I've got,
7 are you're interrupting me doing my job here.

8 MR. STENGER: I'm sorry, excuse me.
9 WHEREUPON,

10 PATRICK TRAMELL
11 was called as a witness by the Federal Communications Commission
12 Enforcement Bureau and, having first been duly sworn, assumed the
13 witness stand, was examined and testified as follows:

14 JUDGE SIPPEL: I'm sorry, I'm a little disheveled here.
15 This room is not properly air conditioned. We're working on it.

16 THE WITNESS: I understand, it's been a long day.

17 JUDGE SIPPEL: They're working on it. You know what they
18 all say, if you're not for the government they won't help you.
19 Okay, this is the testimony of Mr. Patrick Trammell or Trammell?

20 THE WITNESS: Trammell.

21 JUDGE SIPPEL: Mr. Engel?

22 MR. ENGEL: No, I believe Mr. Stenger had a point he'd
23 like to raise.

24 MR. STENGER: Mr. Havens has obviously come all the way
25 from the West Coast to participate in the hearing, so his question

1 is if there is non-confidential parts of Mr. Trammell's testimony,
 2 can we go through those first and then Mr. Havens can be here for
 3 that, and then when you want to get into the confidential parts
 4 then Mr. Havens will be able to leave, you know, and do other
 5 business?

6 JUDGE SIPPEL: Well, let's ask Mr. Engel that. Would
 7 that be all right?

8 MR. ENGEL: No, I'm going to briefly ask the witness to
 9 explain his background. I've noticed that Your Honor appreciates
 10 that, and then I'm going to turn the witness over for cross very
 11 quickly, Your Honor, so that's up to the cross-examiners, Your
 12 Honor.

13 JUDGE SIPPEL: All right, so you'll be able to deal with
 14 what's not confidential first, and then the confidential will come
 15 after that? This is a matter of housekeeping, I don't have a copy
 16 of that unredacted. Am I supposed to get one?

17 MS. KANE: It should be in the folder.

18 JUDGE SIPPEL: Oh, this one here? Okay, I do have it.

19 MR. ENGEL: That's quite all right.

20 JUDGE SIPPEL: All right.

21 MR. ENGEL: And, Your Honor, while you're pulling that
 22 out may I approach the witness?

23 JUDGE SIPPEL: Beg pardon?

24 MR. ENGEL: May I approach the witness, Your Honor?

25 JUDGE SIPPEL: Yes, sir, you may.

1 DIRECT EXAMINATION

2 BY MR. ENGEL:

3 Q Mr. Trammell, I'm going to hand you two documents. The
4 record I, I provided counsel for Environmental Verde, Mr. Stenger,
5 the confidential version before the beginning of the last recess.
6 One of these, they're both your testimony?

7 A Yes, sir.

8 Q They've already been admitted. One of them is
9 confidential; one of them is not. I just want you to briefly
10 confirm that one of those is your confidential version of your
11 testimony and one of them is the redacted public version, and look
12 at the first page and the last page if it would assist you, please.

13 A Yes, sir, it is.

14 Q And if I could caution you, keep those documents, if I
15 could caution you, take the confidential version please and place
16 it face down on your desk, and please note that there are parties
17 in the room that haven't executed the protective order, so they're
18 not entitled at this point to hear any confidential information.
19 So, for the moment, we're going to have you, we're going to ask you
20 to testify only regarding your, the public redacted testimony. Do
21 you understand?

22 A Yes, sir, I do.

23 Q Thank you.

24 JUDGE SIPPEL: The only party that's not covered is Mr.
25 Havens.

1 MR. ENGEL: That's my understanding.

2 JUDGE SIPPEL: Everyone else is covered now.

3 MR. ENGEL: That's correct.

4 JUDGE SIPPEL: Now, do you have a copy, Mr. Stenger, of
5 the unredacted testimony?

6 MR. STENGER: Yes, I do, but its face down, Your Honor,
7 right now, because Mr. Havens is here so he does not have a copy.

8 JUDGE SIPPEL: Okay.

9 BY MR. ENGEL:

10 Q Mr. Trammell, for the court, state your name please again
11 for the court.

12 A My name is Patrick B. Trammell.

13 Q Would you please briefly describe for the court your
14 education and professional background?

15 A Yes, sir, I will. I am a native of Talladega, Alabama.
16 I attended the University of Alabama at Birmingham, where I
17 received a bachelor's degree in accountancy in 1986. In 1988, I
18 graduated from the University of Alabama with a masters in business
19 administration. After that point, I joined South Trust Bank in a
20 commercial lending training program, and did commercial lending for
21 roughly nine years. In 1996, myself and some former retired bank
22 officers founded Southeastern Commercial Finance, and in 2011, I
23 was a founder of Choctaw Telecommunications and Choctaw Holdings.

24 Q Those last entities you referred to, I'll refer to those
25 as Choctaw. Are you presently employed with Choctaw?

1 A I am. I'm chairman and chief executive officer.

2 MR. ENGEL: Your Honor, the witness is Mr. Stenger's for
3 cross-examination.

4 JUDGE SIPPEL: Mr. Stenger? Do you want to introduce
5 yourself?

6 CROSS-EXAMINATION

7 BY MR. STENGER:

8 Q Mr. Trammell, we met in the hallway, but, again, I'm
9 James Stenger from Chad, Moore, and Park. I represent
10 environmental and verde to two of Mr. Havens companies.

11 A Yes, sir.

12 Q And I was wondering who prepared your written testimony?

13 A it was my understanding that we needed the written
14 testimony to be prepared for Mr. Kirk and I put some thoughts
15 together based on my conversations with him about what was
16 necessary, shared that with him, he and I did several edits back
17 and forth, and that's where this document comes from.

18 Q And did you work with the bureau counsel in putting it
19 together?

20 A No, I worked with Mr. Kirk on it.

21 Q And in your first paragraph, your second sentence says
22 that you're responsible for the overall strategic direction and
23 performance, including operations, regulatory affairs, and
24 marketing, the part about regulatory affairs, and I apologize, I
25 didn't catch Mr. Engel's introduction. Are you an attorney, did

1 you say?

2 A No, sir, I'm not. I am a non-active CPA licensed
3 practice in Alabama. Again, I'm inactive. And that, I guess, is
4 my only professional designation.

5 Q So --

6 JUDGE SIPPEL: And I will point out that you left out the
7 word Choctaw as responsibilities, etc.

8 MR. STENGER: For Choctaw.

9 JUDGE SIPPEL: For Choctaw.

10 MR. STENGER: Yes. Understood.

11 JUDGE SIPPEL: Not to be confused with the Maritime.

12 MR. STENGER: Understood.

13 BY MR. STENGER:

14 Q Regulatory affairs, but for those that would include, for
15 example, the, the FCC application for Choctaw to obtain the control
16 of Maritime?

17 A Through the second Thursday application, yes, sir.

18 Q So for those, when you say you're responsible for those
19 regulatory affairs, you're supervising lawyers like Mr. Kirk?

20 A Yes, sir.

21 Q All right, and how long have you been involved in
22 supervising FCC regulatory affairs?

23 A Since we formed Choctaw in 2011.

24 Q All right. And then in your second paragraph your
25 second, your first sentence you talk for Maritime to assign to

1 Choctaw, certain AMTS licenses, and then in your second sentence
2 you refer to that as this transaction, and you say, we implement
3 Maritime's plan of reorganization, which was approved in the
4 bankruptcy court. I'm just summarizing this.

5 A Yes. I understand.

6 Q And then it goes on and there's quite a bit of your
7 testimony that's redacted as being highly confidential, and I guess
8 I have kind of a dumb question. If the Choc --

9 JUDGE SIPPEL: We do allow dumb questions.

10 MR. STENGER: Especially me.

11 JUDGE SIPPEL: Oh, no, you're not singled out.

12 BY MR. STENGER:

13 Q If all of this is implementing the plan of
14 reorganization, why is there so much that is considered
15 confidential here? Isn't the plan of reorganization a public
16 document?

17 MR. ENGEL: Objection, relevance, and calls for a legal
18 conclusion.

19 JUDGE SIPPEL: I'm going to permit it. Can you answer
20 the question?

21 MR. STENGER: Can I respond to that objection, Your
22 Honor, before you rule on it?

23 JUDGE SIPPEL: Well, I'm --

24 MR. STENGER: Just a very quick response. I was told
25 repeatedly that the reason that I needed to sign the protective

1 order is so that I could see the confidential information, then I
 2 would have a chance to challenge its confidentiality, and now that
 3 I'm raising a question as to why information is confidential when
 4 it's in a public bankruptcy thing, now Mr. Engel doesn't want me to
 5 challenge the confidentiality of the information. So I'm just
 6 asking a very simple question. Hopefully, Mr. Trammell has the
 7 answer. Is this plan of reorganization, is it a public document
 8 anybody can read or is it secret?

9 JUDGE SIPPEL: Well, in light of this --

10 MR. ENGEL: Objection, Your Honor. He just indicated
 11 that this material that's redacted is in the bankruptcy plan. That
 12 has never been established.

13 JUDGE SIPPEL: That's kind of a disclosure.

14 MR. STENGER: All right, well, then, let me stay away
 15 from saying anything --

16 JUDGE SIPPEL: Let's just move away from this subject.

17 BY MR. STENGER:

18 Q Okay, putting aside anything that I said about any
 19 redacted stuff in here, don't give any answers that have anything
 20 to do with anything that's redacted in there. Just looking at
 21 paragraph two, that's not redacted, and excuse my ignorance, but is
 22 the plan of reorganization, is that a public document?

23 A Yes, sir, it is. It is a public document.

24 Q Okay, and as far as the stuff that's redacted in your
 25 testimony, the decision to classify it as secret or confidential,

1 was that a decision that you made?

2 JUDGE SIPPEL: Now, that's just irrelevant. That's got
3 no relevance to this case. No relevance at all.

4 BY MR. STENGER:

5 Q Who decided to redact the information?

6 JUDGE SIPPEL: It doesn't make any difference. It's a
7 good -- there was an earlier time to challenge that, and that time
8 has long passed. Let's get on to the merits of the case.

9 MR. STENGER: Well, the merits of it is all blanked out,
10 so I think that Mr. Havens will have to, oh --

11 JUDGE SIPPEL: Well, we can excuse him.

12 BY MR. STENGER:

13 Q Well, let's not excuse mister, oh, I actually had a
14 question, and I don't think it's a confidential question because
15 it's a matter of public record. I believe that one of the
16 documents in the binder, if you have the black binder there --

17 A Is this called EVH admitted exhibits?

18 Q Well, no, there's one called EVH pending exhibits.

19 A Oh, pending exhibits?

20 Q Yes, EVH pending exhibits.

21 JUDGE SIPPEL: All right, what about the --

22 BY MR. STENGER:

23 Q All right, I'm trying to make this clear. EVH pending
24 exhibits, exhibit 437.

25 MR. ENGEL: Your Honor, if it's a pending exhibit it

1 hasn't been admitted yet and shouldn't be shown to the witness and
2 included in this examination as to whether or not it's applicable.

3 JUDGE SIPPEL: Well, unless this witness can help it get
4 into evidence. Is that what you're doing?

5 MR. STENGER: Yes, we went through numerous pending
6 exhibits the other day. This was the first time I'm hearing this.

7 JUDGE SIPPEL: Well, you can --

8 MS. KANE: Actually, Your Honor, we did not, we only
9 addressed admitted exhibits the other day.

10 MR. STENGER: Okay, well, let me ask a question without
11 referring to the exhibit.

12 JUDGE SIPPEL: Okay.

13 BY MR. STENGER:

14 Q It had various schedules in the bankruptcy proceeding,
15 and at one point, I believe that you had an estimate that the, that
16 the Maritime licenses were worth 46 million dollars --

17 MR. KELLER: Objection, relevance? This may be,
18 objection, I don't know what this has with issue G.

19 MR. ENGEL: I don't either.

20 JUDGE SIPPEL: If that's an objection it's sustained.

21 BY MR. STENGER:

22 Q Okay, and that estimate, was that based on evaluation of
23 all the site-based licenses?

24 MR. KELLER: Same objection.

25 MR. ENGEL: Objection, Your Honor.

1 JUDGE SIPPEL: The objection is sustained again.

2 BY MR. STENGER:

3 Q Okay. And as a result of the joint stipulation that was
4 field cancelling a hundred and some site-based licenses, what
5 change would there be in the valuation?

6 MR. ENGEL: Objection, Your Honor. Foundation.

7 JUDGE SIPPEL: Sustained. Valuation is not an issue in
8 this case. I'm just now looking at Issue G.

9 MR. STENGER: No, I think it goes to the whole entire
10 issue, Your Honor, but if you're overruling the question --

11 JUDGE SIPPEL: What did you say?

12 MR. STENGER: I said it go to the intent issues.

13 JUDGE SIPPEL: Oh, there's no intent issues. Nope, got
14 to go. Not on the dollars and cents. Let's keep moving.

15 BY MR. STENGER:

16 Q Okay, you say in paragraph one that you're chairman and
17 chief executive officer of Choctaw Telecommunications and Choctaw
18 Holdings. Can you explain what the difference is in those
19 companies or what they are?

20 A Yes, sir, I can. In the in the plan of reorganization,
21 which was approved by the bankruptcy court, the licenses themselves
22 would be held, assuming -- it's been approved by the bankruptcy
23 court, but if the license are permitted to transfer to Choctaw, it
24 would transfer to Choctaw holdings, and that would hold the
25 license, and there's, there are reasons for that that include

1 adding protection to the unsecured creditors.

2 JUDGE SIPPEL: Before you go any further, is Mr. Havens
3 supposed to be in the courtroom?

4 MR. STENGER: Well, this is his --

5 MR. ENGEL: This isn't confidential.

6 MR. TRAMMELL: Yes, he heard all that, he went to
7 bankruptcy.

8 JUDGE SIPPEL: I'm sorry. My bad.

9 MR. TRAMMELL: Yes, it's okay.

10 JUDGE SIPPEL: Go ahead.

11 BY MR. STENGER:

12 A All right, so that entity, actually, would hold the
13 licenses and Choctaw telecommunications, LLC, is the operating
14 entity.

15 Q Okay, we had testimony from Mr. Reardon yesterday, today,
16 I don't remember. What are his -- I think he said he's with
17 Choctaw and he has certain responsibilities, and then you list here
18 your responsibilities. You're responsible for the overall direction
19 and performance, operations, regulatory affairs, and marketing.
20 Where does Mr. Reardon fit in with his responsibilities compared to
21 your responsibilities? I'll leave it at that.

22 A Okay. Mr. Reardon reports to me. Mr. Reardon spends
23 the majority of his time right now keeping his hand on the market
24 talking with individuals involved in the industry making sure that
25 we have the most up to date knowledge we can have on what our

1 licenses can be used for and how they can serve the public
 2 interest, how we can liquefy some number of them to get the
 3 creditors paid back, which is our charge under the plan of
 4 reorganization. He also works with Mr. Kirk and his colleagues on
 5 certain legal matters as directed by me. Mr. Reardon is an
 6 attorney with some FCC training, and he advises me on that as well.

7 Q I believe that one of the things I heard, which I don't
 8 have any written transcripts, but I believe one of the things I
 9 heard is that there is some sort of management agreement between
 10 Choctaw and Maritime where Choctaw provides some sort of management
 11 services for Maritime. I believe that Mrs. DePriest said something
 12 about that, or maybe it was Mr. Reardon. Can you shed any light on
 13 that? Does that ring a bell?

14 A It does ring a bell. Obviously, Mr. Reardon is
 15 experienced with both these individual licenses and the history of
 16 the company, and he is very experienced in the industry.
 17 Obviously, while we are all learning a lot here, Mr. Reardon's
 18 knowledge was valuable to us, Choctaw was in bankruptcy, and so we
 19 hired Mr. Reardon. At the request of MCLM, Mr. Reardon signed,
 20 with our, with our approval, a contract to consult with Mrs.
 21 DePriest on issues like this because he has been the day to day, my
 22 understanding is, and I believe it's accurate, that for many years
 23 he's been, you know, operating the company and working within the
 24 company at an executive level, and when I say the company I mean
 25 MCLM, on a day to day basis and has a lot of knowledge of this

1 proceeding and other business issues.

2 Q And I know that you've been doing this long enough that
3 you know that until the time when the FCC approves your
4 application, Choctaw can't really take over the Maritime licenses,
5 so how do you draw the line between how much you can do supervising
6 Mr. Reardon and then he's, he's performing services under this
7 management agreement for Maritime, how do you draw the line between
8 how much Choctaw can do or not to do not run afoul of taking
9 premature control of Maritime?

10 A Well, we don't --

11 MR. KIRK: Objection, Your Honor.

12 JUDGE SIPPEL: Yes?

13 MR. KIRK: First of all, he didn't testify that Choctaw
14 was controlling anything. He testified that Mr. Reardon had a
15 separate management agreement and an independent capacity,
16 moreover, it calls for a legal conclusion.

17 JUDGE SIPPEL: Sustained.

18 MR. STENGER: Well, I didn't ask, I didn't say that you
19 were controlling them, I said how did you, in supervising Mr.
20 Reardon who was then consulting for Maritime, how do you make sure
21 that you do not take premature control of Maritime?

22 MR. KELLER: Objection. It's generally broad that he
23 said a transfer of control or management control are not part of
24 issue G.

25 JUDGE SIPPEL: Sustained.

1 BY MR. STENGER:

2 Q Do you make decisions regarding these 16 stations that
3 are then passed down to Mr. Reardon and then passed down to
4 Maritime or Ms. DePriest?

5 A No.

6 JUDGE SIPPEL: Why don't you ask him exactly what his
7 executive functions are?

8 MR. STENGER: Thank you, Your Honor.

9 BY MR. STENGER:

10 Q What exactly are your executive functions at Choctaw?

11 A Primarily it's been paying lawyers. Well --

12 Q We all thank you for that, Mr. Trammell.

13 A So does, I'm sure Mr. Reid, I mean, Mr. Kirk's children.
14 You know, we understand that, and we have been very careful and I'm
15 answering a little bit of the question that was sustained. We've
16 been very careful to treat these licenses as what they are, which,
17 at this point in time, are really a ward of the court and not mine.
18 That being said, I have done everything I can to educate myself on
19 what the status of those license are. You know, the highest and
20 best uses of these licenses are, and any other thing related to
21 them so that if in the event we do get the licenses transferred to
22 us in accordance with the plan of reorganization we'll be ready and
23 prepared to one; execute the plan of reorganization as approved by
24 the bankruptcy court, and number two, establish a long-term
25 profitable business.

1 Q And you understand that Maritime has two kinds of
2 licenses, these legacy site-based licenses on the one hand and then
3 geographic area licenses on the other hand?

4 A Yes, sir, I do.

5 Q And your capacity on handling regulatory affairs, you
6 have an understanding of the difference between those two
7 categories of licenses?

8 A I believe that I do. I'm sure it's probably the lease
9 complex when you buy in this run in, but I believe in general terms
10 I do understand that.

11 Q Now, I'm going to ask you a question, but I don't want to
12 get into any confidential information about your business plan, so
13 you might not be able to answer this question, but when you think
14 about what Choctaw might do with the legacy site-based licenses, is
15 it your belief that Choctaw can sell or lease that spectrum to
16 people who are going to operate so-called fill-in stations without
17 operating the actual legacy site based stations themselves?

18 A Well, I'll answer that as best I can --

19 Q And, again, nothing confidential.

20 A I understand. And, you know, if I do that's my fault,
21 okay? And I believe you're probably talking, you're talking about
22 these 16 legacy licenses.

23 Q Yes.

24 A Well, certainly some are being leased today, and you
25 asked if we would lease some, and some will be leased today, and I

1 assume there's the opportunity to continue those leases. Whether
 2 or not they are operating on the contours or exactly where the
 3 license is, I can't control that right now. I was very clear in my
 4 bankruptcy testimony, which is a public record, that it was our
 5 intent, and it is our intent, for every license that gets
 6 transferred to us to make them compliant with both the spirit and
 7 letter of the FCC rules. Now, my understanding of, and you'll all
 8 have to forgive me on this, this notion of fill-in sites and
 9 outside the contour of where the licenses are, I don't know that
 10 there's, I, in my mind there's an unclear distinction as to whether
 11 that's built out and, and currently operating or permanent
 12 discontinuance and all that, and I don't know the answer to that.
 13 What I do know that is if, in fact, these licenses are transferred
 14 to Choctaw, Choctaw will get them compliant as quickly as they
 15 possibly can.

16 Now, you asked about lease and you asked about sales. We
 17 don't have any discussions going on about selling any of those
 18 licenses. It's, one; that would be inappropriate, and number two;
 19 it'd be inappropriate and we've just not talked to anybody about
 20 that, and I do understand that in the past there's been interest in
 21 several of those licenses from both Amtrak and Massachusetts Bay,
 22 and I believe Long Island Railroad. So I can assume there may be
 23 some lease opportunities. I assume there could be some sales
 24 opportunities. I can assume there could be some joint venture
 25 opportunities, perhaps. So, you know, we believe they certainly

1 have some value, but we, we haven't gone out and, and, you know,
 2 done anything relevant to that, and the other issue is, I mean, I
 3 probably didn't articulate myself very well, but that, as it
 4 relates to the fill-in sites and all that is well above my pay
 5 grade, but I can tell you, and again, my testimony in the
 6 bankruptcy hearing was very clear and I'll just reiterate it and
 7 make it more clear. If Choctaw owns an FCC license, that license
 8 will be compliant.

9 Q I just have one technical question about the bankruptcy.
 10 The, just to make sure something hasn't changed there or there
 11 isn't some status change that I'm not aware of, when you said the
 12 licenses are the ward of the court, but Maritime is a debtor in
 13 possession?

14 A That is correct.

15 MR. STENGER: I'm just conferring with Mr. Havens for
 16 a moment before Mr. Havens leaves. Your Honor, I don't have any
 17 more questions regarding his public testimony. If I could have a
 18 few minutes to review his non-public testimony to see if I have any
 19 questions about that after Mr. Havens has left the room. I just
 20 haven't had the ability to sit here and look at that.

21 JUDGE SIPPEL: Do you want to take ten minutes?

22 MR. STENGER: That would be wonderful, Your Honor.

23 JUDGE SIPPEL: But not with Mr. Havens.

24 MR. STENGER: No, he's leaving, so then I can fully
 25 access my non-public copy and look at it for just a couple minutes.

1 JUDGE SIPPEL: We'll give you ten minutes to do that and
2 be back at five of four? Because it's quarter of now. Get back at
3 five to four.

4 MR. STENGER: Thank you, Your Honor.

5 (Whereupon, the above-entitled matter went off the record
6 at 3:46 p.m. and resumed at 3:55 p.m.)

7 JUDGE SIPPEL: We're back on the record.

8 MR. STENGER: Can I go to the other one?

9 JUDGE SIPPEL: Yes.

10 BY MR. STENGER:

11 Q Now we're looking at your non-public version of your
12 testimony and Mr. Havens has left. On your non-public testimony,
13 the last couple of sentences of paragraph three, which is on page
14 two.

15 A Yes, sir.

16 Q I'm just letting Judge Sippel find that.

17 JUDGE SIPPEL: I have it. I'm with you.

18 BY MR. STENGER:

19 Q Choctaw recently contacted outside engineers to verify
20 the operational status of locations 35 and 40. These third party
21 technicians visited the location and confirmed that equipment
22 remains in place and transmitting. Is that a written report that
23 you have from them?

24 A I believe they're in a placed email form.

25 Q An email form?

1 JUDGE SIPPEL: Is that standard operations for the
2 corporation to use email forms of those kinds of reports?

3 THE WITNESS: Well, you know, yes sir I would say it
4 would be. My concern was the equivalent in place and transmitting,
5 because I know it's not in some of those places, particularly in
6 the deep south are the Mobex licenses and I wasn't going to sign
7 anything if they weren't transmitting. And so --

8 JUDGE SIPPEL: Well, what did you do to verify that? Did
9 you get an email report from the engineer?

10 THE WITNESS: Right.

11 JUDGE SIPPEL: And then anything after that? Did you
12 call or say, did you check with somebody else that maybe known
13 something about that, just double check on the engineer side?

14 THE WITNESS: Well, I believe we used our law firm to
15 recommend some of the engineers. Now, Tim Smith did a couple of
16 those, who was just in here with you, and he's not, at one point in
17 disclosure he was an employee of Choctaw, and he's since gone to
18 work for NRTC.

19 JUDGE SIPPEL: And he's told us that.

20 THE WITNESS: He checked a couple of those but my
21 understanding of it, and again, I am a layman in some manners was,
22 you have something that you can tell they're transmitting and the
23 thing is turned on and it's good to go. And that's the assumption
24 I've worked under.

25 JUDGE SIPPEL: Yes. Yes. Do you have any back up,

1 anything to replace Mr. Smith with?

2 THE WITNESS: Well, not at this time. Certainly we feel
3 like we'll have to, and assuming we'll get the licenses, but right
4 now, you know --

5 JUDGE SIPPEL: Well, this is pretty hard to find.

6 THE WITNESS: An engineer?

7 JUDGE SIPPEL: Yes, with his experience.

8 THE WITNESS: Mr. Smith is, he's very much, well maybe
9 we'll hire him back.

10 JUDGE SIPPEL: Interesting.

11 THE WITNESS: You know, obviously I don't think there was
12 no issue with him. You know, he didn't leave the company because
13 of any dispute or anything, but there's not much he could do.
14 We've been sitting here in bankruptcy since 2011, so.

15 JUDGE SIPPEL: That's what I figured.

16 THE WITNESS: Right.

17 JUDGE SIPPEL: All right, I'm sorry. Go ahead.

18 BY MR. STENGER:

19 Q Do you recall the names of who those third party
20 technicians were?

21 A I don't.

22 Q And when you say recently, how long ago was that?

23 A Well, it was when the plan of reorganization was first
24 approved, I sat down with Mr. Reardon, Mr. Smith, and Ms. Watkins,
25 and we tried to go through every license and find out what was

1 operating, what wasn't, what would be subsumed by geographic
 2 licenses and try to make some determination as to what would be the
 3 best business decision to make with any certain licenses, and at
 4 that point in time. And also Mr. Havens -- and I don't recall
 5 exactly the time frame, but Mr. Havens was filing certain motions
 6 concerning certain licenses, and there was some, some negotiation
 7 going on with him about some licenses in the Pacific Northwest. So
 8 the licenses that were under contract, and also the licenses where
 9 there was interest, ongoing interest, I asked them to, and Mr.
 10 Smith did most of this, went to check on what was operating at that
 11 point in time.

12 Q I kind of lost my train of attention, and I apologize.
 13 That time frame that you're talking about was when?

14 A Well, and I'm sorry, I was not clear. Right after the
 15 approval of the reorganization plan, I sat down and tried to get
 16 some sense of what the licenses were.

17 Q When would that, and I apologize, I don't know when that
 18 whole --

19 A That's okay.

20 Q When was the approval of the reorganization?

21 A In January of 2013. And we had some conversations then
 22 and, and we did some checking on some sort of licenses then and
 23 but, when it came up that I needed to give a testimony to that I
 24 wanted to make sure of what my testimony, I wanted my testimony to
 25 be accurate.

1 Q Can I, can I just --

2 A So we checked all these.

3 Q I'm sorry, I didn't mean to interrupt.

4 JUDGE SIPPEL: You have to let him finish.

5 MR. STENGER: I'm sorry, I apologize, I didn't mean to do
6 that, sir. Did you finish?

7 THE WITNESS: I believe I did.

8 BY MR. STENGER:

9 Q If you can just look in the government's book, the white
10 book, Bureau book number one, if you have that. Enforcement Bureau
11 book number one. If the EB direct case exhibits public version, I
12 don't care whether it's the public or the private version, either
13 one. Volume one.

14 JUDGE SIPPEL: What tab you on?

15 MR. STENGER: The tab is 49 and 50.

16 JUDGE SIPPEL: Forty-nine and 50?

17 MR. STENGER: Yes.

18 JUDGE SIPPEL: All right. Let's see what we have right
19 here. Okay, 49 and 50. That's these two here. Oh, here they are.
20 All right, and the one after that.

21 THE WITNESS: Yes, sir.

22 BY MR. STENGER:

23 A Okay.

24 Q Well, I want to give you a second to look at those two.

25 They're not long, they're only a couple of sentences, but I want to

1 give you a second to look at them. There's no rush. Take as long
2 as you want.

3 A Okay.

4 Q I'm just wondering if those are the reports from the
5 engineers that you were referring to in your testimony?

6 MR. KIRK: Objection, Your Honor. He didn't refer to
7 them as reports.

8 MR. STENGER: I'm sorry. Well let me -- I'm looking at
9 these tabs.

10 JUDGE SIPPEL: Sustained.

11 MR. STENGER: Well, let me go back to his testimony,
12 which is in a different tab.

13 JUDGE SIPPEL: His testimony being who?

14 MR. STENGER: The witness's testimony.

15 JUDGE SIPPEL: Mr. Trammell?

16 MR. STENGER: Mr. Trammell's testimony.

17 BY MR. STENGER:

18 Q I'm sorry, you said these third party technicians visited
19 locations and confirmed that equipment remains in place. So are
20 these reports the, what you refer to as the confirmation?

21 A I don't know. I don't know if you can tie these actual
22 reports to this, but I know that when this came up we had those
23 checked. It was my intent to have those checked. Now, I do know
24 that Cyber Com, you asked if I remembered any of the engineering
25 firms. I do remember Cyber Com. They obviously did this in August

1 of 2013, and my memory is they did it, or someone rechecked it
2 prior, more closely to when I executed this in September of 2014.

3 Q And this sentence, and going back to your testimony where
4 you said Choctaw recently contacted and confirmed, is the person at
5 Choctaw who did that you or somebody else?

6 A It would have been at my -- I did not contact anybody
7 personally. Either Mr. Reardon or, I believe, Ms. O'Connor at our
8 law firm may have known someone to call, and Mr. Reardon may have
9 called on it on our behalf, but I did not contact anybody directly.

10 Q And then those people turned around and reported back to
11 you?

12 A The engineers?

13 Q No, the people who contacted the Choctaw people?

14 A Yes, yes. Yes.

15 Q You got them to do that before you signed this?

16 A Yes, sir.

17 MR. STENGER: Your Honor, I don't have anymore questions
18 for this witness.

19 JUDGE SIPPEL: No questions? Mr. Kirk, any redirect?

20 MR. ENGEL: With the court's indulgence, Your Honor.

21 JUDGE SIPPEL: You know, I'm going to, hold on a second,
22 I do want to ask something myself. I'm interested in -- there's
23 not anybody outside the door, isn't there?

24 MR. STENGER: Pardon me?

25 MR. ENGEL: I'll check, Your Honor.

1 MR. STENGER: Mr. Havens?

2 JUDGE SIPPEL: No, no, not Mr. Havens, anybody. Is there
3 anybody outside? I don't expect there to be.

4 MR. STENGER: No, no. I'll be happy to close it if you'd
5 like.

6 JUDGE SIPPEL: No, please, it's too stuffy in here. With
7 respect to -- do you make plans for the future in light of your
8 status now? This would be the stations?

9 THE WITNESS: Yes, sir.

10 JUDGE SIPPEL: Do you have some kind of a long-range
11 planning group or something that gets together periodically?

12 THE WITNESS: Well, there are five board members,
13 including myself.

14 JUDGE SIPPEL: Who would they be?

15 THE WITNESS: They would be -- Choctaw has four
16 shareholders.

17 JUDGE SIPPEL: And they'd be?

18 THE WITNESS: They would be me. I own a minority share of
19 ten percent.

20 JUDGE SIPPEL: All right.

21 THE WITNESS: There's a, there's a firm called Watson &
22 Downs Investments, LLC, which is a family office investment company
23 held by John Watson in Dothan, Alabama, and Hayne Hollis of Dothan,
24 Alabama is an owner, and they each own 22.5 percent of the company.
25 The other 45 percent is owned by an investment fund called

1 Collateral --

2 JUDGE SIPPEL: They each own 22 percent?

3 MR. TRAMMELL: Yes, sir, 22.5 percent.

4 JUDGE SIPPEL: Okay.

5 MR. TRAMMELL: And so their 22.5 percent and my two
6 percent is 55 percent.

7 JUDGE SIPPEL: Right.

8 MR. TRAMMELL: And then Collateral Guaranty, which is an
9 investment fund in Nashville, Tennessee owns the other 55 percent.
10 The principals of that are Jim Osteen and Lucius Burch.
11 Particularly, Mr. Watson and Mr. Burch have invested in and been on
12 boards of directors of telecom companies for the last 20 or 30
13 years.

14 JUDGE SIPPEL: Do you know some of those companies?

15 MR. TRAMMELL: Well, some of Mr. DePriest's companies.
16 Mr. Burch has -- was with Massey Burch and they had wide ranging
17 investments, and I cannot name all of those.

18 JUDGE SIPPEL: All right.

19 MR. TRAMMELL: I believe they may have been an initial
20 investor at some point in Walcom before it went public.

21 JUDGE SIPPEL: Yes.

22 MR. TRAMMELL: Mr. Watson, I believe, has owned licenses
23 personally on his own. He was involved with a company named, I
24 think Verseva, which held licenses. So, they've got a bigger depth
25 and length of experience, and we meet with Mr. Reardon

1 periodically. Mr. Reardon and I, are continuously, and Mr.
 2 Reardon's real task is to continue to keep his hand on the pulse of
 3 the industry, as you know better than I do, that the, the original,
 4 the original AMTS spectrum usage has pretty much gone away, but the
 5 Marine --

6 JUDGE SIPPEL: Yes, it's private.

7 THE WITNESS: [REDACTED]
 8 [REDACTED]
 9 [REDACTED] [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]

14 JUDGE SIPPEL: I understand what you're saying.

15 THE WITNESS: [REDACTED] [REDACTED]
 16 [REDACTED] [REDACTED]
 17 [REDACTED]
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 19 [REDACTED] [REDACTED]
 20 [REDACTED] [REDACTED]
 21 [REDACTED]

22 JUDGE SIPPEL: [REDACTED]

23 MR. TRAMMELL: [REDACTED] [REDACTED]
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 21 [REDACTED]

22 JUDGE SIPPEL: Well, what geographic area would that be
 23 covering?

24 THE WITNESS: It's nationwide.

25 JUDGE SIPPEL: Nationwide?

1 THE WITNESS: For standard, yes, sir. Yes, sir.

2 JUDGE SIPPEL: So --

3 THE WITNESS: And we have, might I?

4 JUDGE SIPPEL: Yes, go ahead, no, go ahead.

5 THE WITNESS: We have, we have a mandate and we have a
6 charge to pay back the secured credit.

7 JUDGE SIPPEL: Right.

8 THE WITNESS: Okay, on the insecured and the secured
9 creditors. But the notion that our business is based on, you know,
10 warehousing a bunch of licenses, dumping them, and going off into
11 the sunset is erroneous. We intend to operate this business, we
12 intend to be good stewards of FCC licenses, and we tend to do
13 things in the public interest. I have enjoyed being with you, I've
14 enjoyed meeting Ms. Kane, I've enjoyed meeting Mr. Engel, but if we
15 are awarded these licenses, we're not going to be best friends with
16 the Enforcement Bureau. That's not our goal in life.

17 JUDGE SIPPEL: Right, I don't think that's a requirement.
18 But I want to ask you this. I try to get you in, right now you're
19 in this, this is my paraphrasing of a state of kind of fluffs, and
20 the first thing that you've got to do under the bankruptcy
21 mandated, you've got to pay off the creditors.

22 THE WITNESS: Right.

23 JUDGE SIPPEL: Now, are you expecting, based on what you
24 have at this point, for assets, that you will be able to pay off
25 creditors and then carry on a business, or is it all going to be

1 used up paying those creditors?

2 THE WITNESS: You know --

3 JUDGE SIPPEL: It doesn't sound like an option, but --

4 THE WITNESS: Well, we're going to pay the creditors, you
5 know. We've got creation with credit, but I guess my point of that
6 is and, and bear in mind there are, there are 10 million dollars
7 worth of contracts that are in limbo in the bankruptcy process.
8 And, and depending on the, that you're aware of that?

9 JUDGE SIPPEL: No, I can't say I am. At least not at the
10 top of my mind.

11 THE WITNESS: Okay, in the, when the company went into
12 bankruptcy, they had contracts with Duquesne, who's been here and
13 some other utilities. They had a seven million dollar contract
14 with Southern California Railroad, so there's 10 million in
15 contracts there, and I can't speak to the penny on, on the
16 creditors, but there is roughly 30 million dollars of creditor debt
17 out there, plus what is approaching now about a little over four
18 million dollars of debtor and possession financing that's got to be
19 repaid, plus probably another million dollars in administrative
20 claims. So there are about 35, 36 million dollars.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

It is terribly frustrating to me to have a 25 year business career and this entire process is foreign to me. When this happened I got with Mr. Kirk and our attorneys and I said, let's go up to the FCC, sit down, give them our plan, tell them what we're going to do and work this out. And, well, because of the ex parte rules and our friend from California suing us every five minutes and writing stories about, fiction about myself and what my motives were, and what my friendships are, we've not been able to do that. So I appreciate the opportunity to do that today.

JUDGE SIPPEL: So, the idea is -- well, I don't know that much about bankruptcy practice, but it's usually a trustee; the trustee collects on the end of the credit, and then the creditors get paid off. This goes beyond that. This is a combination of an investment opportunity, plus a function of paying off credit.

THE WITNESS: Well, the first thing we do is pay off creditors.

JUDGE SIPPEL: Okay.

THE WITNESS: And then we'll go from there.

JUDGE SIPPEL: All right, I did it in reverse, yes.

THE WITNESS: That's correct. We're not in this as an

1 investment opportunity first. First, we're in this to pay off the
2 creditors.

3 JUDGE SIPPEL: And the bankruptcy court has approved this
4 system?

5 THE WITNESS: Yes, and if I could, if I might, tell you
6 a little bit about the process and how we got here?

7 JUDGE SIPPEL: Well, before you do that, I don't know if
8 we want to go that far afield.

9 THE WITNESS: One point I would make on that.

10 JUDGE SIPPEL: Go ahead.

11 THE WITNESS: There were two competing plans. Mr. Havens
12 said he had a plan; he never proffered it to the bankruptcy court.
13 Every class of characters secured, unsecured, administrative, etc.,
14 voted overwhelmingly for our plan. A lot of those creditors are
15 retired people on fixed income and smaller businesses, and they're
16 not the kind of people, they're not investment funds and stock, big
17 companies and all that kind of stuff, and I spend three hours a
18 week updating them on where we are with that.

19 And to their credit, and I think to some extent, to our
20 credit, when we filed our application for second Thursday, several
21 of those creditors filed on our behalf. When we filed our petition
22 for reconsideration, several of those creditors filed on our
23 behalf. Not one creditor has filed in opposition of anything we've
24 tried to do. They've supported us through this whole entire
25 process, and it's really important for me to get them paid back

1 because I know some of those people personally, and I know what the
 2 income means, and it means a lot to me and my family, you know.
 3 I've got two children and I've got 130 thousand dollars in this,
 4 not that this is anybody's business, but it came from a second
 5 mortgage on my home, and I have two children to educate. So it's
 6 very important for me to get this done. It's very important for me
 7 to get this done in the right way, and that's what we want to do.

8 JUDGE SIPPEL: Well, I can certainly see the motivation
 9 factor in that, but where do you stand on this? In, in general
 10 layman's terms, your way for the approval for the bankruptcy court?

11 THE WITNESS: Well, we've got that.

12 JUDGE SIPPEL: Since late December?

13 THE WITNESS: We've had that for 23 months.

14 JUDGE SIPPEL: Yes, since January 30, 2013.

15 THE WITNESS: Actually, we've had it for two years
 16 because it was approved in November and issued in January, and it's
 17 on page four of the wireless bureau right now, I believe.

18 JUDGE SIPPEL: Well, then you've also got to face this
 19 litigation with the FCC, of course, that's only one chunk of the
 20 investigation.

21 THE WITNESS: That's correct.

22 JUDGE SIPPEL: And you still have to go through the
 23 second phase of the litigation before you're going to have these
 24 assets free and clear. Obviously, I'm not saying you personally,
 25 but it's Maritime.

1 THE WITNESS: Yes, sir.

2 JUDGE SIPPEL: But you're --

3 THE WITNESS: We're not Maritime. We're not Maritime.

4 JUDGE SIPPEL: No, you're not Maritime, but there's the
5 linkage there in the sense that you --

6 THE WITNESS: Correct.

7 JUDGE SIPPEL: You stand in their shoes at some point.

8 THE WITNESS: Correct.

9 JUDGE SIPPEL: So there's a lot -- that litigation has to
10 be completed, and it has to be completed to the satisfaction of
11 Maritime/your operations.

12 THE WITNESS: I don't know about Maritime, Your Honor.
13 I'm not concerned about Maritime. My dealings with Maritime has
14 hurt my marriage, my family, my other business. We have to get
15 these licenses in order to pay ourselves and the creditors back.
16 We're not -- so please separate us in your minds from Maritime, if
17 you would, but I understand what you're saying. This is a process
18 that we have to go through, and it's been very expensive, and it's
19 been very painful just from the standpoint of everybody waiting
20 around for their money.

21 JUDGE SIPPEL: But Maritime is taking the primary on
22 this, defending this case.

23 THE WITNESS: Defending this?

24 JUDGE SIPPEL: Yes.

25 THE WITNESS: Well, if that's the case, Choctaw has no

1 license assets to defend.

2 JUDGE SIPPEL: Exactly. That's the point.

3 THE WITNESS: Right.

4 JUDGE SIPPEL: But if Maritime, let's assume
5 hypothetically if Maritime were successful in this litigation, the
6 commission, do you stand to benefit from that in the sense of
7 having additional assets to dispose of, disposable assets? I guess
8 actually the assentees would be the beneficiary.

9 THE WITNESS: Yes, sir, which is, which is us. Which is
10 Choctaw on behalf of the creditors. We went to bankruptcy court
11 and we insisted upon this. Two important things, and maybe we're
12 getting too far afield here, but there's, there's two important
13 things that offer protection for all those smaller creditors. One,
14 we're asking for the licenses to be assigned to Choctaw Holdings.
15 The creditors committee, which is the unsecured creditors, have a
16 security interest in the proceeds of those assets until they are
17 paid off.

18 JUDGE SIPPEL: Okay.

19 THE WITNESS: That was very important to us. Number two;
20 the cleaning calls for a liquidating agent, which is basically
21 along the lines of what you would consider as a trustee. And all
22 the funds from sales, etc. are approved by the liquidating agent
23 for distribution to the creditors according to the plan. So, we've
24 done what we need to do, we believe, to be Caesar's wife in this.
25 We want to be transparent and ensure that everybody can be, rest

1 assured, that we're trying to do this in the right manner.

2 JUDGE SIPPEL: Okay, so assuming you've got 30 million
3 dollars, I mean, that's an arbitrary number, but you did mention 30
4 million dollars. How long would it, has any payments been made
5 towards that 30 million?

6 THE WITNESS: No, sir, because there's been no contracts
7 closed and we've not been able to do anything with the licenses and
8 Maritime's not been able to do anything with the licenses.

9 JUDGE SIPPEL: Yes. Okay. That's all I have. Thank
10 you. Anybody want to do redirect?

11 MR. ENGEL: Nothing further from the Bureau, Your Honor.

12 JUDGE SIPPEL: Okay, you're excused then as a witness.

13 Is that correct? Nobody wants to recall this witness?

14 MR. ENGEL: Permanent for the Bureau, Your Honor.

15 JUDGE SIPPEL: Witness, You're out of here.

16 THE WITNESS: Thank you, sir.

17 JUDGE SIPPEL: Good luck on the bowls.

18 THE WITNESS: Thank you.

19 JUDGE SIPPEL: Actually it's Holy Cross, but they're not
20 going to be in a bowl ever again. We're finished here for the day.

21

22 MS. KANE: Your Honor, we just wanted to note that during
23 the break we were able to confirm that the witness from Duquesne
24 who wasn't able to participate yesterday will be here to testify
25 tomorrow morning.

1 JUDGE SIPPEL: Yes. We'll be here tomorrow morning.

2 MS. KANE: We will.

3 JUDGE SIPPEL: All right.

4 MS. KANE: And we would also want to see if there's any
5 further clarification on whether Mr. Calabrese intends to be here
6 tomorrow so that we know whether to prepare going forward.

7 MR. STENGER: I haven't heard anything further from him
8 as of this moment, Your Honor, than what I said before, he was
9 concerned about the arrest warrant from Mr. Reardon. So I've been
10 in the hearing. I'll try to find out. If I learn something I will
11 certainly email everyone right away and let them know, especially
12 if he says he's not coming.

13 JUDGE SIPPEL: Thank you, Mr. Stenger.

14 MR. STENGER: My understanding at the moment is that he's
15 still planning to come, although he had concerns. But I don't
16 know.

17 JUDGE SIPPEL: Thank you. And we have how many witnesses
18 left for the Bureau then?

19 MS. KANE: We only have one more witness in the morning.

20 JUDGE SIPPEL: One more witness, and then there's a
21 witness for Duquesne.

22 MS. KANE: Well, no, we have one witness. The last
23 witness that will be called by the Bureau is the witness from
24 Duquesne.

25 JUDGE SIPPEL: Oh, okay.

1 MS. KANE: So the Bureau has only --

2 JUDGE SIPPEL: And the Bureau's been held up.

3 MS. KANE: Right, yes, right, Your Honor. So the Bureau
4 has one more witness, and then it sounds like Mr. Stenger is still
5 planning on calling his one witness.

6 JUDGE SIPPEL: Okay.

7 MR. ENGEL: And, Your Honor --

8 JUDGE SIPPEL: We should be finished tomorrow?

9 MR. ENGEL: Your Honor, I believe briefly if Mr. Tavers
10 testifies there will be Mr. Reardon, perhaps, would be recalled to
11 address some more --

12 MR. KIRK: Mr. Reardon and/or Mr. Smith may be recalled
13 as rebuttal witnesses according to what's been testified. But he
14 won't, he won't particularly be long tomorrow, it will be very
15 short.

16 MR. STENGER: Well, all right. Your Honor, I can tell
17 you that my questioning of the witness from the Duquesne Electric
18 Company --

19 JUDGE SIPPEL: Yes.

20 MR. STENGER: I anticipate that will be very short. I
21 don't see that I have many questions for him based on the written
22 testimony that I've seen, which is all public. So I think that my
23 cross with him will be very short. So I'll just give you a heads
24 up.

25 JUDGE SIPPEL: All right. All right, so it's all

1 dependent, the length of tomorrow is all dependence on Mr.
2 Calabrese.

3 MR. ENGEL: Exactly.

4 JUDGE SIPPEL: And there should be a cut off on that. If
5 we don't have any word about him by the time we open up tomorrow at
6 ten, then I'm going to consider him off the witness list.

7 MR. STENGER: Well, he'll have to fly in tonight, so I'm
8 sure --

9 JUDGE SIPPEL: Well, you can report definite word that he
10 is on the plane or that, you know, he's coming?

11 MR. STENGER: Yes, Your Honor.

12 JUDGE SIPPEL: That's one thing.

13 MR. STENGER: I will.

14 JUDGE SIPPEL: But if you come and you say, I still don't
15 know anything about Mr. Calabrese's availability I'm going to, at
16 that point --

17 MR. STENGER: No, I won't, I won't say that at ten
18 o'clock tomorrow morning, Your Honor.

19 JUDGE SIPPEL: Okay, fine. We're in recess until ten
20 tomorrow. Thank you, Mr. Trammell.

21 THE WITNESS: Thank you Your Honor.

22 JUDGE SIPPEL: Whatever witness is left --

23 (Whereupon, the above-entitled matter went off the record
24 at 4:28 p.m.)
25